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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

November 6, 2013
9:35 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP
14 Attorneys for Plaintiff

15 BY: RANDY M. MASTRO
ANDREA E. NEUMAN
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21 Attorneys for Donziger Defendants
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23 GOMEZ LLC
Attorneys for Defendants Hugo Camacho, Javier Piaguaje
24 BY: JULIO C. GOMEZ
25

DB68CHE1

(Trial resumed)

THE COURT: Good morning, everyone.

Before we resume with the witness, one preliminary matter.

The day before yesterday I think Chevron filed a motion with respect to the proposed witness statement of Karen Hinton. I haven't had a response to it yet. But in looking at it, I would say this and ask a question.

At the beginning of the trial, the defendants, or at least some of them, took issue with the content of some of Chevron's witness statements, arguing that a lot of the material was obvious hearsay, that a lot of it was argumentative, that a lot of it was presented without a basis to conclude that the witness had personal knowledge, and various other objections of that character. And they did so quite properly in the main, and I chastised Chevron and suggested to Chevron that it delete such material from the witness statements, and for the most part that was done, although there remained a few issues.

Subject to seeing what the defense has to say in response to Chevron's motion, it appears to me that Ms. Hinton's witness statement suffers from every flaw of which the defense complained of Chevron's witness statements, and I want to know before I spend any more time on this whether you're going to revise it quite substantially or whether we are

DB68CHE1

1 going to go through a needless exercise.

2 MR. FRIEDMAN: There would be two issues that I would
3 ask you to look at as you consider this. One is, if you could
4 look at Ms. Zygocki's witness statement. I can't characterize
5 exactly what her title is, but she is in charge of public
6 relations type issues for Chevron and is expected to testify
7 probably tomorrow. I think the two have to be read together,
8 because we obviously don't know what the Court is going to
9 permit or not permit with regard to Ms. Zygocki, and in part
10 Ms. Hinton is directed to combat Ms. Zygocki.

11 THE COURT: This is the first I am hearing of the
12 problem with Ms. Zygocki.

13 So I will certainly look at it and Chevron, if there
14 is a reason to do so, ought to make appropriate revisions to
15 that one. But the best thing of all, of course, would be for
16 the two of you to talk to each other and come to some
17 understanding because there seemed to be some problems that may
18 be common.

19 MR. FRIEDMAN: We are talking about lots of issues,
20 your Honor, and getting a lot done, but there is a lot to get
21 done.

22 THE COURT: Well, I have no doubt.

23 My deputy has handed me a note that the witness wants
24 to wear his red wool hat because he is cold.

25 By all means, Mr. Zambrano, wear your hat if you wish

DB68CHE1

1 to do so.

2 THE WITNESS: Thank you.

3 NICOLAS ZAMBRANO, resumed.

4 THE COURT: The witness is reminded that he is still
5 under oath.

6 You may proceed, Mr. Mastro.

7 MR. MASTRO: Thank you, your Honor.

8 One piece of housekeeping before we resume. I had
9 handwritten the word work over and handed it to the witness,
10 and we have marked it for identification as Plaintiff's Exhibit
11 6401. I just wanted the record to be complete by offering it.

12 THE COURT: I don't think it you need it as evidence,
13 although I don't care much one way or the other.

14 Does anybody else care? So I will receive it.

15 (Plaintiff's Exhibit 6401 received in evidence)

16 DIRECT EXAMINATION (Cont'd)

17 BY MR. MASTRO:

18 Q. Mr. Zambrano, are you ready?

19 A. Always.

20 Q. Very good. Let's resume.

21 Mr. Zambrano, am I correct that in August 2010,
22 Chevron moved to have Judge Ordonez recused as presiding judge
23 of the Lago Agrio Chevron case?

24 A. I don't recall the date, but it did file the motion.

25 Q. Did you have any knowledge before Chevron filed that motion

DB68CHE1

Zambrano - direct

1 that there would be a motion filed by Chevron to recuse Judge
2 Ordonez?

3 A. No.

4 Q. But when that motion to recuse Judge Ordonez was filed, you
5 viewed that as an opportunity, correct, sir?

6 MR. BOOTH: Objection. Form.

7 THE COURT: Overruled.

8 A. No.

9 Q. Sir, returning to your second term on the Chevron case from
10 October 2010 until you issued the judgment in the Chevron case
11 in February 2011, that's the period when you were dictating to
12 Ms. Calva the draft judgment while she typed it into your new
13 computer, correct, sir?

14 A. Yes.

15 Q. Directing your attention to January 2011.

16 Sir, am I correct that by that time, you had already
17 concluded your review of the record in the Lago Agrio Chevron
18 case?

19 A. Could you please repeat the question?

20 Q. Certainly, sir.

21 Directing your attention to January 2011, am I correct
22 that by that time you had already concluded reviewing the
23 record in the Lago Agrio Chevron case?

24 A. Way before.

25 Q. By that time, January 2011, you were already polishing the

DB68CHE1

Zambrano - direct

1 draft of the judgment; that's your testimony, sir, correct?

2 A. Yes.

3 Q. Am I also correct, sir, that in January 2011, you were
4 telling newspaper reporters that you still had approximately
5 500 cuerpos to review of the Lago Agrio Chevron case record?

6 A. Yes.

7 Q. That would mean you were telling reporters that you had
8 50,000 or more pages of the Lago Agrio Chevron case record
9 still to review, correct, sir?

10 A. No.

11 Q. Sir, when you told reporters in January 2011 that you still
12 had 500 cuerpos to review in the Chevron Lago Agrio case, that
13 translates into 50,000 or more pages of the Lago Agrio Chevron
14 case record, correct?

15 A. No.

16 MR. MASTRO: I will move on, your Honor.

17 THE COURT: Did you ever establish what a cuerpo
18 means?

19 MR. MASTRO: I think we did this earlier.

20 Q. Cuerpo is a case file of 100 pages, correct, sir?

21 A. Yes.

22 Q. So if you said you had 500 cuerpos still to review, 500
23 times 100 pages per cuerpo equals 50,000 pages, correct, sir?

24 MR. BOOTH: Objection. Form.

25 THE COURT: Overruled.

DB68CHE1

Zambrano - direct

1 A. It's likely.

2 Q. So when you told reporters in January 2011 that you still
3 had 500 cuerpos to review in the Lago Agrio Chevron case, you
4 were lying to those reporters, correct, sir? That's your
5 testimony?

6 MR. BOOTH: Objection. Form.

7 THE COURT: Overruled.

8 A. I said approximately. I didn't say 500.

9 Q. Sir, when you told reporters in January 2011 that you had
10 approximately 500 cuerpos still to review in the Lago Agrio
11 Chevron case, you were lying; that's your testimony, correct?

12 A. Yes.

13 Q. Sir, during the period from October 2010 through February
14 14, 2011, you had many other civil and criminal cases that were
15 assigned to you to decide besides the Lago Agrio Chevron case,
16 correct?

17 A. Yes.

18 Q. And you issued many other orders in your other cases during
19 the period from October 2010 through February 14, 2011,
20 correct, sir?

21 A. Could you please repeat the question?

22 Q. You issued many other orders in your other cases besides
23 the Lago Agrio Chevron case during the period October 2010 to
24 February 14, 2011, correct, sir?

25 A. Yes.

DB68CHE1

Zambrano - direct

1 Q. In fact, it's possible that you issued more than 200
2 written orders or judgments in your other cases besides the
3 Lago Agrio Chevron case between October 2010 and February 14,
4 2011, correct, sir?

5 MR. GOMEZ: Objection. Form.

6 THE COURT: Overruled.

7 A. It's likely.

8 Q. During the time you were working on the Lago Agrio Chevron
9 judgment between October 2010 and February 14, 2011, you were
10 also typing some of those orders in your other cases into your
11 new computer yourself, correct?

12 A. Some of them.

13 Q. Now, sir, you were aware before you issued the judgment in
14 the Lago Agrio Chevron case on February 14, 2011 that Chevron
15 had filed this RICO case here in New York, correct, sir?

16 A. No.

17 Q. Sir, were you aware before you issued the Lago Agrio
18 Chevron judgment on February 14, 2011 that Judge Kaplan had
19 entered a temporary restraining order against enforcement of
20 any anticipated judgment?

21 A. I don't recall.

22 Q. Sir, did Mr. Fajardo tell you before you issued the Lago
23 Agrio Chevron judgment on February 14, 2011, that he and others
24 representing the Lago Agrio plaintiffs had been sued here in
25 New York in a lawsuit that you're now testifying in today?

DB68CHE1

Zambrano - direct

1 A. Could you please repeat it?

2 Q. Certainly.

3 Sir, did Mr. Fajardo tell you before you issued the
4 judgment in the Lago Agrio Chevron case that he and other
5 representatives of the Lago Agrio plaintiffs had been sued here
6 in New York?

7 A. Never.

8 Q. Sir, did you know that President Correa supported the Lago
9 Agrio plaintiffs' case before you issued the Lago Agrio Chevron
10 judgment on February 14, 2011?

11 MR. BOOTH: Objection. Form and other things.

12 THE COURT: Overruled.

13 A. No.

14 Q. Did you ever see any press reports that President Correa
15 supported the Lago Agrio plaintiffs' litigation before you
16 issued the Lago Agrio Chevron judgment on February 14, 2011?

17 MR. GOMEZ: Objection. Form.

18 THE COURT: Overruled.

19 A. No.

20 Q. So it's your testimony, sir, that you are not aware from
21 any source anywhere that President Correa supported the Lago
22 Agrio plaintiffs' litigation before you issued the Lago Agrio
23 Chevron judgment on February 14, 2011?

24 MR. GOMEZ: Objection. Form.

25 THE COURT: Overruled.

DB68CHE1

Zambrano - direct

1 A. No.

2 Q. So you were aware from some source that President Correa
3 supported the Lago Agrio plaintiffs' litigation before you
4 issued the judgment on February 14, 2011? Yes or no, sir?

5 A. No.

6 Q. Now, sir, after you finished drafting the Lago Agrio
7 Chevron judgment on the new computer in your office, am I
8 correct that you then had to upload it on to a system called
9 Satje?

10 A. Yes.

11 Q. Tell the Court what the Satje system is.

12 A. The Satje system consists in that after one has finished
13 working, processing court orders or decrees, findings or
14 judgments, this is a system that belongs to the judicial branch
15 exclusively. Once the information has been uploaded into the
16 system, when it is issued, the system records the date and the
17 time. That information is recorded in the big computer, the
18 brains of the system. And from that it is processed so that
19 the public can become aware, and it automatically issues
20 notices to the parties in the proceedings. That is the
21 responsibility of the clerk of the court, the notices.

22 Q. Now, sir, when you were done writing the Lago Agrio Chevron
23 judgment, you logged into the Satje system, correct?

24 A. You are permanently connected, logged on.

25 Q. And you uploaded the judgment into the Satje system as your

DB68CHE1

Zambrano - direct

1 judgment in the Lago Agrio case, correct, sir?

2 A. It is my judgment, which is signed.

3 Q. Sir, nobody made any changes to the Lago Agrio --

4 THE COURT: Please answer the question, Mr. Zambrano.

5 If you don't remember it, we will have it read back.

6 Q. You uploaded the judgment into the Satje system as your
7 judgment in the Lago Agrio Chevron case, correct, sir?

8 MR. GOMEZ: Objection to the translation.

9 THE COURT: Confer, gentlemen.

10 MR. MASTRO: Your Honor, I think the translation was
11 fine. The witness answered this question easily at the
12 deposition, but if the translator wants to make a modification.
13 I have been asking new questions but --

14 THE COURT: Let's just get an answer to this one. OK?

15 A. Yes.

16 Q. And nobody made any changes to the Lago Agrio Chevron
17 judgment after you uploaded it on to the Satje system, correct?

18 A. No.

19 THE COURT: Does that mean, no, somebody did make
20 changes, or does that mean, no, nobody made any changes?

21 THE WITNESS: It is likely that I may have made
22 changes because up to the last minute you can make changes
23 regarding a word or a term.

24 THE COURT: The question is whether anybody made any
25 changes after you uploaded the decision to the Satje system?

DB68CHE1

Zambrano - direct

1 What is the answer to that, sir?

2 THE WITNESS: Aside from myself, no one.

3 THE COURT: Did you make changes to the judgment after
4 you uploaded it to the Satje system?

5 THE WITNESS: I don't recall.

6 THE COURT: Go ahead, counsel.

7 BY MR. MASTRO:

8 Q. Sir, the file on your new computer into which the Lago
9 Agrio Chevron judgment was typed by Ms. Calva as you dictated
10 it, was that the only order or judgment that existed on that
11 file?

12 A. No.

13 Q. What other orders or judgments existed on that file, the
14 file on which the judgment in the Lago Agrio Chevron case was
15 typed by Ms. Calva as you dictated it to her?

16 A. I don't recall.

17 Q. But as you sit here today, you're sure there were other
18 orders and judgments typed into the same file as Ms. Calva
19 typed the judgment in the Lago Agrio Chevron case as you
20 dictated it to her?

21 MR. GOMEZ: Objection. Asked and answered.

22 THE COURT: Overruled.

23 A. No.

24 Q. So as you sit here today, you cannot recall any other
25 orders or judgments that were typed into the same file as the

DB68CHE1

Zambrano - direct

1 file on which the Lago Agrio Chevron judgment was typed by Ms.
2 Calva as you dictated it to her on your new computer, correct,
3 sir?

4 MR. GOMEZ: Objection. Asked and answered.

5 THE COURT: Overruled.

6 A. No.

7 THE COURT: Does that mean that you can't recall or
8 that you can recall?

9 THE WITNESS: I do recall, but the question wasn't
10 properly asked.

11 THE COURT: Well, you and I agree on that one, sir.

12 This would be a whole lot easier if you simply framed
13 your question with the premise, and then is that correct, and
14 then you will get an unequivocal answer, and we will save a
15 day.

16 Q. Do you recall that there were other orders and judgments on
17 the same file in your new computer as the file on which Ms.
18 Calva typed the Chevron Lago Agrio judgment as you dictated it
19 to her, sir?

20 A. No.

21 Q. Let's switch topics, sir.

22 THE COURT: Before you leave that, I have one
23 question.

24 MR. MASTRO: Certainly, your Honor.

25 THE COURT: What word processing software was used to

DB68CHE1

Zambrano - direct

1 type the judgment in the Chevron Lago Agrio case?

2 THE WITNESS: The system uses Roman 11. That's what
3 the system shows.

4 THE COURT: Are you telling me that Roman 11 is a word
5 processing software?

6 THE WITNESS: I don't know about software, but that's
7 what the system shows, that writing.

8 THE COURT: You mean that it's a typeface called Roman
9 and the type size is 11?

10 THE WITNESS: Yes.

11 THE COURT: All right.

12 Have you ever heard of Microsoft Word?

13 THE WITNESS: I have heard it.

14 THE COURT: Is that the software that was on your
15 computer that the judgment was written in?

16 THE WITNESS: I wouldn't be able to remember.

17 THE COURT: Proceed, counsel.

18 MR. MASTRO: Thank you, your Honor.

19 BY MR. MASTRO:

20 Q. Sir, am I correct that for each sentencia decided by an
21 appellate tribunal, there has to be a juez ponente?

22 A. Could you please repeat the question?

23 Q. Certainly, sir.

24 Am I correct that for an appellate panel in Ecuador,
25 there are three judges who sit on an appeal, first level

DB68CHE1

Zambrano - direct

1 appeal?

2 A. Yes.

3 Q. On each appellate panel, there is one member of the panel
4 who becomes the juez ponente?

5 THE COURT: Juez.

6 MR. MASTRO: I will admit that I do not speak Spanish.
7 I will let the translator take it from there.

8 A. Yes.

9 Q. And that is the judge who delivers the opinion for the
10 appellate court, correct?

11 A. No.

12 Q. Tell me what the role is of the juez ponente.

13 A. He is a judge in charge of drafting the draft of the
14 ruling, and he submits it to the other judges for their
15 consideration, the other judges who are part of the bench, so
16 that once there is consensus among all of them, it is issued
17 with their signature.

18 Q. So, sir, am I correct that to select the juez ponente, that
19 a sorteo or lottery process has to be conducted?

20 A. Internal among them.

21 Q. So there is a lottery held to select which of the three
22 will serve in that role, correct?

23 A. Yes.

24 Q. Am I correct that Judge Toral was the judge who became the
25 juez ponente on the first appellate panel to hear the Lago

DB68CHE1

Zambrano - direct

1 Agrio Chevron case appeal that was appointed in March 2011?

2 A. No.

3 Q. Am I correct that Judge Toral became the juez ponente on
4 the Chevron Lago Agrio case appeal?

5 A. Yes.

6 Q. Am I also correct that you publicly stated at the time that
7 Judge Toral had been unanimously elected or appointed by the
8 judges of the panel?

9 A. It seems as if I did.

10 Q. You even held a press conference with Judge Toral in March
11 2011 to congratulate him on his selection as juez ponente,
12 didn't you, sir?

13 A. No.

14 Q. Sir, you participated in a press conference on March 24,
15 2011, with Judge Toral at the time of his selection as juez
16 ponente, didn't you, sir?

17 MR. MASTRO: I will rephrase it.

18 Q. You participated in a press conference on March 24, 2011,
19 with Judge Toral at the time he became juez ponente on the Lago
20 Agrio Chevron case, correct?

21 MR. BOOTH: Objection. Form.

22 THE COURT: Sustained.

23 Mr. Zambrano, were you present on or about March 24,
24 2011 at a press conference?

25 THE WITNESS: Yes.

DB68CHE1

Zambrano - direct

1 THE COURT: Was Judge Toral present on that occasion?

2 THE WITNESS: I think so.

3 THE COURT: And was the subject of the Chevron case
4 mentioned on that occasion?

5 THE WITNESS: Yes.

6 THE COURT: Pick it up, Mr. Mastro.

7 MR. MASTRO: Thank you, your Honor.

8 BY MR. MASTRO:

9 Q. Was the subject of Judge Toral becoming the juez ponente on
10 the Lago Agrio Chevron case appeal addressed at that press
11 conference?

12 A. No.

13 Q. Sir, did there come a time when the Chevron Lago Agrio case
14 appellate panel had to be reconstituted?

15 A. Yes.

16 Q. Am I correct that when that occurred in November 2011,
17 Judge Toral once again became juez ponente on the Lago Agrio
18 Chevron case appeal?

19 A. I don't recall.

20 Q. Sir, you are a close friend of Judge Toral, correct?

21 A. What do you mean by close?

22 Q. You and Judge Toral are friends, correct, sir?

23 A. No.

24 Q. You're the person at the court who actually signed the
25 orders memorializing Judge Toral's appointments on the Chevron

DB68CHE1

Zambrano - direct

1 Lago Agrio case appellate panels, correct?

2 A. Yes.

3 MR. MASTRO: I will move to another topic.

4 Q. Sir, Liliana Suarez is your companion, correct?

5 MR. BOOTH: Objection. Form and other things.

6 THE COURT: The objection to form is overruled. Is
7 there anything else substantial?

8 MR. BOOTH: If I can say it in open court, relevance.

9 THE COURT: I will see you at side bar and you will
10 tell me where we are going.

11 (Continued on next page)

DB68CHE1

Zambrano - direct

1 (At the side bar)

2 MR. MASTRO: I am happy to explain the relevance. I
3 am about to ask a short series of questions about the overture
4 that Liliana Suarez, his companion and then secretary to the
5 court, and his companion then, made to Adolfo Callejas back in
6 2009 to have a private meeting with Judge Zambrano. So I am
7 setting up the personal relationship to then ask the question
8 that he should know the answer to.

9 THE COURT: What about that?

10 MR. BOOTH: I have nothing to say about that.

11 THE COURT: Just to make this a little simpler, and
12 minimize side bars, I would have no objection if when you're
13 objecting on a ground other than form or privilege, to your
14 citing the particular rule of evidence.

15 MR. BOOTH: Sorry, Judge.

16 THE COURT: We will do the best we can. Maybe you can
17 try TPH. That's a joke.

18 MR. BOOTH: I don't know the rules of evidence, but am
19 I allowed to say relevance in open court?

20 I don't mean to be flip when I say other things.
21 There are other things. Sometimes vague.

22 THE COURT: Form is adequate for objections as to
23 form. If the sole objection is relevance, you can say that.

24 So can you, Mr. Gomez.

25 (Continued on next page)

DB68CHE1

Zambrano - direct

1 (In open court)

2 THE COURT: Objection is overruled.

3 BY MR. MASTRO:

4 Q. Mr. Zambrano, do you remember the question?

5 THE INTERPRETER: The interpreter did not interpret
6 it.

7 Q. Liliana Suarez is your companion, correct, sir?

8 A. Yes.

9 Q. And she was your companion back in 2009, correct?

10 A. False.

11 Q. She was the secretary to the court in 2009, correct, Lago
12 Agrio Sucumbios court?

13 THE INTERPRETER: The interpreter seeks a
14 clarification. Meaning clerk of the court or his secretary to
15 one of the courtrooms?

16 MR. MASTRO: I will make it simple.

17 Q. What role or job did Liliana Suarez have at the Lago Agrio
18 Sucumbios court back in 2009?

19 A. I believe she was the clerk of the court.

20 Q. Sir, in October 2009, did you have Liliana Suarez contact
21 Adolfo Callejas, Chevron's counsel?

22 MR. BOOTH: Objection. Form.

23 THE COURT: Overruled.

24 A. False.

25 Q. Sir, do you know whether in October 2009, Liliana Suarez

DB68CHE1

Zambrano - direct

1 contacted Adolfo Callejas, Chevron's counsel, to request that
2 he meet privately with you to discuss the Lago Agrio Chevron
3 case?

4 MR. BOOTH: Objection. Form.

5 THE COURT: Sustained.

6 Q. Do you have any personal knowledge of whether Liliana
7 Suarez contacted Adolfo Callejas back in October 2009 to
8 request a private meeting with you?

9 A. No.

10 Q. Do you have any personal knowledge of whether Liliana
11 Suarez contacted Mr. Callejas for any reason back in October
12 2009?

13 A. I don't know.

14 Q. Are you aware that Mr. Callejas swore a contemporaneous
15 declaration back in October 2009 saying that Ms. Suarez had
16 contacted him on your behalf in October 2009?

17 MR. BOOTH: Objection. Form.

18 THE COURT: Sustained.

19 Q. Mr. Zambrano, have any of the lawyers for the Lago Agrio
20 plaintiffs or Mr. Donziger told you that Mr. Callejas swore out
21 a contemporaneous declaration back in October 2009 swearing
22 that Liliana Suarez had contacted him in October 2009 to
23 request that he meet with you privately?

24 A. No.

25 MR. MASTRO: I will move on, your Honor.

DB6LCHE2

Zambrano - direct

1 Q. Sir, when you were a prosecutor, you accepted or solicited
2 bribes to release criminal defendants and quash investigations
3 against them, didn't you, sir?

4 THE INTERPRETER: Can you please repeat the second
5 part.

6 THE COURT: Break it down, counselor.

7 Q. When you were a prosecutor, sir, you accepted bribes to
8 release criminal defendants, correct?

9 A. No.

10 Q. When you were a prosecutor, you solicited bribes to release
11 criminal defendants, correct, sir?

12 A. No.

13 Q. When you were a prosecutor, you accepted bribes to quash
14 investigations against criminal suspects, correct?

15 A. No.

16 Q. When you were a prosecutor, you solicited bribes to quash
17 investigations against criminal suspects, correct?

18 A. No.

19 Q. When you were a judge, you accepted bribes from litigants
20 to rule in their favor?

21 A. No.

22 Q. When you were a judge, you solicited bribes from litigants
23 to rule in their favor?

24 A. No.

25 Q. Sir, you were removed from your position as a judge in Lago

DB6LCHE2

Zambrano - direct

1 Agrio by the judicial council as a result of you releasing a
2 suspected drug dealer on his own recognizance on appeal after
3 he had been detained in the Aniversario case correct, sir?

4 MR. BOOTH: Objection, relevance, propensity.

5 THE COURT: I don't think it's offered for propensity.

6 MR. MASTRO: It's not, your Honor.

7 MR. BOOTH: Well, then relevance, your Honor.

8 THE COURT: I think it's relevant. Overruled. Your
9 side certainly asked these kinds of questions of Mr. Guerra and
10 I allowed it.

11 THE WITNESS: Could you please repeat the question.

12 Q. Certainly, Mr. Zambrano. The judicial council removed you
13 from office as a judge in Lago Agrio as a result of you
14 releasing a suspected drug dealer on his own recognizance as an
15 appellate judge in the Aniversario case, correct, sir?

16 A. False.

17 Q. Sir, the judicial council ordered you removed from office
18 as a result of the rulings you made in the Aniversario case,
19 correct?

20 A. False.

21 MR. MASTRO: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 MR. MASTRO: I'm handing the witness what's been
24 marked as Plaintiff's Exhibit 411 already submitted into
25 evidence.

DB6LCHE2

Zambrano - direct

1 Q. Sir, the Spanish language version of this document starts
2 on page 13.

3 Am I correct, sir, that this is a copy of the judicial
4 council's February 29, 2012 decision ordering you removed from
5 office as a judge?

6 A. May I see the end of the document to see if this is the
7 one?

8 Q. Certainly, Mr. Zambrano. Would you look at pages 10 and 11
9 under resolution. In the Spanish language version that's pages
10 22 and 23.

11 A. Yes. It says right here the reasons for my removal.

12 Q. And it says, sir, that the reasons for your removal --

13 THE COURT: It's not in evidence, counselor.

14 MR. MASTRO: Your Honor, I offer it into evidence.

15 The witness has identified it as the decision.

16 THE COURT: I understand he identified it. I was
17 here.

18 MR. BOOTH: Objection, relevance, hearsay.

19 THE COURT: I'll hear counsel at the side bar.

20 (At the side bar)

21 THE COURT: Relevance first. What's the relevance?

22 MR. MASTRO: Your Honor, I think that this is relevant
23 for several reasons.

24 First, it should come in in any event for the reasons
25 for his removal.

DB6LCHE2

Zambrano - direct

1 But, second, it goes to under both 404(b) and under
2 608(b), it goes to probity. The circumstances here, you know,
3 suggest that he was removed from office under questionable
4 circumstances as to whether he released a drug dealer and
5 potentially was improperly influenced. It's called malice and
6 inexcusable error. And it describes the circumstances of him
7 releasing this drug dealer on his own recognizance.

8 So I think it goes to related issues. He's now denied
9 that he committed any improprieties. Meanwhile he's removed
10 from office for what's called inexcusable error, which means
11 there's no legitimate excuse for the behavior.

12 And it's also the case that I think it reflects in
13 terms of the circumstances, and I'll go into them in more
14 detail, it goes to his character, his reputation, his
15 trustworthiness, the circumstances in which he was removed from
16 this case and what he did in this case.

17 It's also the case, your Honor, that certainly the
18 fact that he was removed and the basis for it, you know, is
19 something relevant to these proceedings as your Honor evaluates
20 this case and this witness.

21 So this is somebody who has had a history, and I will
22 be going into it now, of being accused of taking bribes and
23 taking bribes. He's going to deny the allegations, I'm going
24 to go -- I'm going to go through. Deny it and impeach him with
25 the charge.

DB6LCHE2

Zambrano - direct

1 THE COURT: I'm not worried about what comes next.
2 I'm worried about this. Am I not correct that everything you
3 said so far presupposes the truth of the findings and so forth
4 in this document?

5 MR. MASTRO: Well, but, your Honor, this is a decision
6 of a judicatory body. There are findings made. Your Honor is
7 allowed to consider those findings --

8 THE COURT: You have strenuously objected to my
9 considering the findings in the Lago Agrio case.

10 MR. MASTRO: It's really also the finding itself is
11 notice to the defendants that the kind of person you're dealing
12 with and I think your Honor has the right to take into
13 consideration -- it's not, it doesn't have to be offered for
14 its truth. I think your Honor has a right.

15 THE COURT: If it's not offered for its truth, what is
16 it offered for?

17 MR. MASTRO: Well, I am offering it both for its
18 truth, but I'm also saying that your Honor has a right to
19 consider it under these circumstances because it's something
20 that the defendants and the public are on notice of about this
21 person's conduct.

22 THE COURT: So what?

23 MR. MASTRO: Well, your Honor, at the core here is
24 whether this man is telling the truth and performed his
25 services honestly. He was removed from the bench for a

DB6LCHE2

Zambrano - direct

1 dishonest, illegitimate, inexcusable error.

2 THE COURT: Well, if it happened, maybe he was removed
3 from the bench because he offended somebody in a position to
4 remove him. How do I know?

5 MR. MASTRO: The circumstances, your Honor, as you
6 will see, are and the findings made here are that he's sitting
7 on an appellate panel. A major drug dealer is --

8 THE COURT: Look, do you have any other arguments for
9 the relevance?

10 MR. BRODSKY: Your Honor, if we offer it not for its
11 truth but for the fact that the defendant is removed, has been
12 told he's removed for these reasons, and we can question him as
13 to whether or not those reasons are valid or not, we can accept
14 those answers. But he may acknowledge, once he sees the
15 reasons, he may acknowledge those are true.

16 And so what the relevance is it makes the following
17 facts of consequence more likely than not. It makes the fact
18 that he's, first of all, we can impeach him with it on his
19 credibility. Second, it makes it more likely that he's been
20 removed under these circumstances. Well, your Honor, we'll lay
21 the foundation. He's been removed. He eventually gets a job
22 with the entity of the government.

23 MR. MASTRO: With the government entity.

24 MR. BRODSKY: And it's our argument, your Honor, that
25 after his removal, he then goes to bat, essentially, in

DB6LCHE2

Zambrano - direct

1 defending the judgment vociferously and coming here as a
2 consequence of getting a job and a position with the Ecuadorian
3 government. And so this lays the factual predicates for that.

4 MR. MASTRO: He's lost his job. The government knows
5 the reasons why. And, nevertheless, somehow, removed under
6 this cloud for inexcusable error, he ends up getting the cushy
7 government job later.

8 THE COURT: Okay. Mr. Booth.

9 MR. BOOTH: Yes, your Honor. It is clearly propensity
10 evidence. It goes to, as he said, establish bad character.
11 He's using innuendo to suggest that his removal was for some
12 dishonesty or bribery, I guess because it was in a list of
13 questions after the bribery allegations that he made, that the
14 witness denied.

15 It is absolutely nothing but propensity evidence. It
16 is a collateral issue. You don't get to open the door to
17 collateral issue just by asking the witness questions, him
18 saying no, and then you get to impeach with something that
19 would otherwise be completely irrelevant collateral.

20 This is very prejudicial to this witness. It is
21 not -- in this country, if you have a criminal felony
22 conviction for fraud or dishonesty, you can ask that simple
23 question. You can't ask about bad acts. You can't go into bad
24 acts. You can't. It's all propensity.

25 THE COURT: I'm dealing with not questions about bad

DB6LCHE2

Zambrano - direct

1 acts now. I'm dealing with the admissibility of Plaintiff's
2 Exhibit 411. Can we focus on that.

3 MR. BOOTH: I believed I was. That is a bad act
4 collateral.

5 THE COURT: No, it's a document.

6 MR. BOOTH: Well, apologize.

7 THE COURT: And it's offered for two purposes at
8 least. It's offered for one or more purposes, all of which
9 presuppose the truth of the statements in the document.

10 It is offered also for the nonhearsay purpose of
11 establishing, as I understand it, a ground for bias on the part
12 of the witness, namely, that having been removed by the
13 Ecuadorian government as a judge for misconduct, whether that's
14 an accurate and true fact or not, that is to say, whether he
15 actually was guilty of misconduct or not, the government, which
16 is an avowed supporter of your client's case, then proceeded
17 directly or indirectly to hire him as a lawyer.

18 Now, it seems to me you need to address that point
19 because there the document is not offered for the truth and it
20 seems to me it arguably does go to bias.

21 MS. FRIEDMAN: Your Honor, may I speak to that?

22 THE COURT: Of course.

23 MS. FRIEDMAN: Excuse me, I haven't been talking
24 today.

25 THE COURT: You deserve a rest.

DB6LCHE2

Zambrano - direct

1 MS. FRIEDMAN: I don't think it's clear or has been
2 established that who he works for is the government. I think
3 what we've heard is the government owns some shares in the
4 company, as does some other, Petroecuador and I think a Chinese
5 company.

6 THE COURT: And who owns Petroecuador?

7 MS. FRIEDMAN: I understand.

8 THE COURT: That was a serious question. Who owns
9 Petroecuador?

10 MS. FRIEDMAN: I don't know the answer to that.

11 MR. MASTRO: The government.

12 MS. FRIEDMAN: I'm assuming the government does, but I
13 don't know that. Also, they have other shareholders. I don't
14 know what the percentages is. So that would be No. 1.

15 No. 2 -- neither did Mr. Zambrano. The bias that they
16 want to show is shown by he lost his job and then got hired by
17 the government. That would be shown. The bad acts are not
18 necessary. Calling them bad acts are not necessary. The fact
19 that he's out of a job and he's working for the government --

20 THE COURT: The fact that he's out of a job because
21 the government found he was untrustworthy, whether they were
22 right or wrong, is essential to this.

23 MS. FRIEDMAN: That would impeach the government but
24 not him. That would be saying basically the government is
25 hiring someone that they shouldn't have hired. It's not

DB6LCHE2

Zambrano - direct

1 impeaching him for --

2 THE COURT: What it really shows, potentially,
3 assuming it's all connected, is that his next paycheck depends
4 on the continued good will of the government which is a
5 partisan with respect to this case. That's what it arguably
6 shows.

7 MS. FRIEDMAN: That would be true irregardless of what
8 this document shows. His next paycheck is dependent on the
9 government regardless.

10 THE COURT: I understand that point. But the
11 likelihood, given this finding, whether the finding is right or
12 wrong, that the government would ever countenance his
13 employment absent his position as a defender of this judgment,
14 which is in the interest of the government as it has announced
15 them, is to me significant.

16 MS. FRIEDMAN: But all of that would be true, your
17 Honor, regardless of this document. In other words --

18 THE COURT: Not at all. Not at all. If it had not
19 been the government who discharged him for misconduct, it's a
20 whole different equation.

21 The document is going to be received not for the truth
22 of the matter and subject to connection on the ground that it
23 goes to the witness's interest.

24 MR. MASTRO: Your Honor.

25 THE COURT: And you better connect it up or I'll

DB6LCHE2

Zambrano - direct

1 strike it.

2 MR. MASTRO: I will connect it up, your Honor.

3 THE COURT: I'm assuming you're representing to me
4 that you will.

5 MR. MASTRO: I am representing that, your Honor. And
6 while it is true that the witness said he doesn't know, even
7 though he works for this joint venture, what percentage -- he
8 knows the government owns, Petroecuador owns part of it. He
9 doesn't know what percentage. We will prove that the
10 government by law has to own over 50 percent of it. And we
11 will try to refresh his recollection as to the place he works
12 knowing Petroecuador, government-owned oil company, owns
13 51 percent of the company.

14 THE COURT: Well, look, that remains to be proved, but
15 you have my ruling and I'll strike it if you don't deliver.

16 MR. MASTRO: But, your Honor, will I be allowed on the
17 first basis to confront him about the allegations in here and
18 see if he acknowledges?

19 THE COURT: One question at a time. I've only focused
20 on this.

21 (In open court)

22 THE COURT: All right. The ruling is as follows, just
23 to summarize the side bar.

24 Plaintiff's Exhibit 411 is received not for the truth
25 of anything stated therein, but for nonhearsay purposes,

DB6LCHE2

Zambrano - direct

1 subject to connection.

2 (Plaintiff's Exhibit 411 received in evidence)

3 THE COURT: And if the representations that were made
4 as to the connection at side bar or other satisfactory
5 connection is not proved, I will strike it.

6 BY MR. MASTRO:

7 Q. Mr. Zambrano, am I correct that the judicial council
8 ordered you removed from your job as a judge for "malice,
9 manifest negligence, and inexcusable error"?

10 MR. BOOTH: Objection, form. The document is in
11 evidence.

12 THE COURT: Well, but it's not in evidence for the
13 truth because to that extent I sustained your objection.

14 MR. BOOTH: Yes, your Honor. And, again, I don't want
15 to say things in open court I'm not supposed to, but that would
16 go to the relevance of this question. This is a question that
17 goes to the issue of truth, as I understand the question.

18 MR. MASTRO: It goes to the basis.

19 THE COURT: I take your point. Sustained.

20 The document says what it says. It's not taken for
21 the truth of what it says, but it purports to state a reason
22 for his removal. Whether that reason is accurate or not,
23 that's what they said.

24 Q. Sir, is it true that you ordered the release of a criminal
25 defendant named Christian Suquisupa, S-U-Q-U-I-S-U-P-A, who had

DB6LCHE2

Zambrano - direct

1 been arrested on a drug conspiracy charge?

2 MR. BOOTH: Objection, relevance, truth of the matter.

3 THE COURT: Look, Mr. Mastro, I guess I better see
4 counsel at side bar again.

5 (At the side bar)

6 THE COURT: As I understand Rule 608(b), you are
7 allowed on cross to inquire into specific instances of conduct
8 if probative of the character for truthfulness or
9 untruthfulness of the witness.

10 Now, where are you going with this?

11 MR. MASTRO: I'm going with going through these
12 circumstances and then asking him flat out, going through these
13 circumstances, didn't you get bribed, okay. And that goes to
14 truthfulness for sure. It also goes to potential issues under
15 404, but it's really a 608(b) issue. I want to go through the
16 circumstances.

17 THE COURT: Okay. Now, Mr. Booth, assume for the sake
18 of argument, A, that there's good faith basis for asking the
19 question of whether he did this because he took a bribe; and
20 assume further that the answer to that question, the truthful
21 answer, is that he was bribed; does that go to truthfulness or
22 untruthfulness?

23 MR. BOOTH: Does it go to truthfulness or
24 untruthfulness, just the question you just asked, in other
25 words, if he gets him on the stand and just says anything in

DB6LCHE2

Zambrano - direct

1 this case did you do because you took a bribe and he says no.

2 THE COURT: No, I didn't say anything in this case.

3 MR. BOOTH: I mean in the case that we're talking
4 about here.

5 THE COURT: If the witness were to say, yes, I let him
6 go because I was bribed, would that fact go to his
7 truthfulness?

8 MR. BOOTH: Yes.

9 THE COURT: Okay. Now, what's the good faith basis
10 for going there?

11 Just a minute, we'll get back to you.

12 What's the good faith basis for asserting or
13 questioning that he took a bribe?

14 MR. MASTRO: Your Honor, there were public press
15 reports at the time from sources that appear to be from the
16 police department reported in the press that the only
17 conceivable explanation for why he did what he did was either
18 was that the FARC, which was this was a FARC drug conspiracy,
19 that the FARC had threatened the judge or he took a bribe.
20 That's flat out in the press reports from a source from law
21 enforcement.

22 So I think I have a right to ask that question, not
23 that I'm saying I know what his answer is going to be.

24 THE COURT: I understand that.

25 MR. MASTRO: I'm happy to show your Honor the article.

DB6LCHE2

Zambrano - direct

1 THE COURT: You understand, of course, as I understand
2 it, you're stuck with his answer, whatever it is.

3 MR. MASTRO: I do understand that, your Honor. But
4 I'm hoping that by laying out the factual circumstances, he
5 will feel compelled to admit he took a bribe.

6 THE COURT: Okay. Mr. Booth, what else you got?

7 MR. BOOTH: Your Honor, the question is not evidence.
8 This is a collateral matter to get -- he wants to get in all
9 this other stuff because he says ultimately he's going to ask
10 the question did you take a bribe. But the real effort is to
11 get in all this collateral stuff which has nothing to do with
12 bribery. There's nothing about that in here. He's relying his
13 good faith on press reports in another country which I haven't
14 seen. This is completely --

15 THE COURT: Show him the press reports.

16 MR. MASTRO: I'll be happy to show him.

17 MR. BOOTH: This is triple hearsay, your Honor.
18 That's not a good faith basis to get into all this other
19 evidence just because you say at the end you're going to ask
20 about a bribe.

21 THE COURT: Sir, the questions, as you say, are not
22 evidence. And there's no jury and I've already heard it all.
23 Now, it's not part of the trial record yet, but it's his
24 answers that will be the evidence.

25 MR. BOOTH: My point was questions about this which

DB6LCHE2

Zambrano - direct

1 we're now going to the truth of this, we're now having him have
2 to answer for truth or not of this, then this is going to be
3 used to impeach him on the issue of truth.

4 THE COURT: You're pointing at the document.

5 MR. BOOTH: Yes, I apologize, the document.

6 THE COURT: But it's not going to be used to impeach
7 him for the truth because it's not received for the truth of
8 the matters asserted.

9 MS. FRIEDMAN: I just say 403, your Honor.

10 THE COURT: Yes, well, I'm not going there. I'll
11 judge the probative value and I'll judge it appropriately and I
12 can judge it fairly.

13 MR. BOOTH: Judge, I'm not sure I understand. I would
14 still stand up based on what I've just heard you say and object
15 if he asked him questions, seeks to impeach him with this
16 document. Are you telling me that you've ruled that's
17 appropriate? Because I don't --

18 THE COURT: No, I have not told you that. I think I
19 made it pretty clear exactly the opposite is what I ruled.

20 MR. BOOTH: Thank you, Judge.

21 THE COURT: Okay. We'll take our morning break. You
22 show adverse counsel the material you rely on for the good
23 faith basis. When I come back, if there's any claim that
24 there's not a good faith basis, I will hear it, but my
25 understanding now is the purpose of the questions is to get to

DB6LCHE2

Zambrano - direct

1 the ultimate question: Didn't you take a bribe?

2 And who knows. Maybe he'll say yes. I guess he'll
3 say no. The examiner is going to be bound by that answer, as I
4 understand it, unless I hear something I haven't heard, and
5 that's where we're going to be. And the document is in only
6 for the limited purpose previously discussed and not for the
7 truth.

8 MR. MASTRO: Understood.

9 THE COURT: That's where I am.

10 MR. MASTRO: Your Honor, I want to try and cut through
11 the side bars. I don't want to --

12 THE COURT: So do I.

13 MR. MASTRO: So I'm going to show some of my cards and
14 maybe we can.

15 THE COURT: Do what you're going to do. But let's not
16 have a side bar about what you're going to do to prevent having
17 side bars.

18 MR. MASTRO: I was going to tell you about the line of
19 questioning.

20 THE COURT: We'll see where we get.

21 (In open court)

22 THE COURT: We'll take a 15-minute break.

23 (Recess)

24 THE COURT: Just give me a moment to look at something
25 in the transcript.

DB6LCHE2

Zambrano - direct

1 (Pause)

2 THE COURT: I think I can do this in open court in the
3 presence of the witness.

4 I'm going to limit further, subject to
5 reconsideration, the purpose for which Plaintiff's 411 has been
6 received and it is limited further to this extent.

7 Referring to the draft transcript, page 23, lines 10
8 to 14, the witness testified that pages 10 and 11 in the
9 Spanish language version, which are pages 22 and 23 of the
10 exhibit, states the reasons for his removal. Thus, he adopted
11 to that extent at least the written statement of the judicial
12 council or whatever body produced that document of its reasons,
13 true or false, for removing him. I don't think that ultimately
14 changes where we go with this, but we'll see as we move along.

15 Now, is there anything else?

16 MR. BOOTH: Your Honor, you asked me to look at the
17 good faith basis.

18 THE COURT: Yes.

19 MR. BOOTH: And I do not agree with the way they
20 interpreted it.

21 THE COURT: Hand it up. Mark it for identification.

22 MR. BOOTH: This is the copy they handed me, your
23 Honor, and it has a Plaintiff's Exhibit sticker on it.

24 THE COURT: So I'm looking at Plaintiff's
25 Exhibit 2495.

DB6LCHE2

Zambrano - direct

1 I think it's enough.

2 MR. BOOTH: May I have?

3 THE COURT: Sure.

4 MR. MASTRO: Thank you, your Honor.

5 THE COURT: Let's proceed.

6 BY MR. MASTRO:

7 Q. Mr. Zambrano, you were one of the appellate judges assigned
8 to hear the appeal of the order to detain criminal defendant
9 Christian Ricardo Suquisupa Rosero, correct, sir?

10 A. Yes.

11 Q. And you and Judge Ordonez ordered his release on his own
12 recognizance over the dissent of another judge, correct?

13 A. No.

14 Q. You and Judge Ordonez ordered his release over the dissent
15 of another judge, correct?

16 MR. GOMEZ: Objection, asked and answered.

17 A. No.

18 Q. You and Judge Ordonez ordered that -- strike that.

19 You and Judge Ordonez vacated his pretrial detention
20 pending trial over the dissent of a third judge, correct?

21 A. No.

22 Q. You and Judge Ordonez decided to substitute the
23 precautionary measure of pretrial detention ordered by the
24 trial court against this defendant, correct?

25 MR. GOMEZ: Objection, form.

DB6LCHE2

Zambrano - direct

1 THE COURT: Overruled.

2 A. No.

3 Q. Sir, why don't you look at the first page of the judicial
4 council's decision. It's on page 13 in the Spanish, page 1 of
5 the English under background.

6 A. It's here?

7 Q. Yes. Sir, second paragraph, last sentence, referring you
8 to Judges Nicolas Zambrano and Leonardo Ordonez decided to
9 substitute the precautionary measure of pretrial detention
10 ordered by the First Court of Criminal Guarantees of Sucumbios
11 against Christian Ricardo Suquisupa Rosero without taking into
12 consideration the dangerousness and the compound nature of the
13 crime the accused allegedly committed.

14 Do you see that, sir?

15 THE COURT: Not interested in whether he sees it. If
16 you have a question, let's get on with it.

17 MR. BOOTH: Objection, relevance, use of the document.

18 THE COURT: I'm sorry, I can't hear what you say.

19 MR. BOOTH: Objection, relevance, the way the document
20 is being used, truth of the matter.

21 THE COURT: The document is not in for the truth of
22 the matter. He is entitled to ask the question.

23 Q. Isn't it correct, sir, that you and Judge Ordonez decided
24 to substitute the precautionary measure of pretrial detention
25 ordered by the First Court of Criminal Guarantees of Sucumbios

DB6LCHE2

Zambrano - direct

1 against Christian Ricardo Suquisupa Rosero?

2 MR. GOMEZ: Objection, asked and answered.

3 THE COURT: Overruled.

4 A. Yes.

5 Q. And Mr. Suquisupa was a Colombian charged with drug
6 trafficking, correct, sir?

7 A. No.

8 Q. Mr. Suquisupa was caught escorting a truck filled with more
9 than 500 kilograms of cocaine, correct, sir?

10 MR. GOMEZ: Objection. Speculation, your Honor.

11 THE COURT: Sustained in that form.

12 Q. Mr. Zambrano, isn't it a fact that the judicial council
13 found that Mr. Suquisupa was caught escorting a truck filled
14 with more than 500 kilograms of cocaine -- strike that. I'll
15 rephrase it.

16 Isn't it a fact that the allegation was that
17 Mr. Suquisupa was caught escorting a truck full of more than
18 500 kilograms of cocaine?

19 MR. BOOTH: Objection, form, relevance.

20 THE COURT: Look, Mr. Mastro, I think you can get in
21 this point a lot easier without all of this.

22 MR. MASTRO: I understand, your Honor. I'm trying to
23 lay a foundation for asking the question in a way that I might
24 actually get the right answer. But I'm happy to move on if
25 your Honor wants me to move on.

DB6LCHE2

Zambrano - direct

1 THE COURT: You're trying your case, as they're trying
2 their case. I'm only suggesting maybe we can save some time.

3 (Continued on next page)
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DB68CHE3

Zambrano - direct

1 Q. Am I correct, Mr. Zambrano, that it was alleged that
2 Mr. Suquisupa was associated with the FARC?

3 MR. BOOTH: Objection. Relevance.

4 THE COURT: Overruled.

5 A. I don't recall.

6 Q. And that he was armed at the time of his arrest and fleeing
7 the scene?

8 MR. BOOTH: Objection. Form. Relevance.

9 THE COURT: Can I hear the question?

10 (Record read)

11 THE COURT: Overruled.

12 A. Yes.

13 Q. Am I also correct that the police investigation ultimately
14 led them to recover eight tons of drugs?

15 MR. BOOTH: Objection. Form.

16 THE COURT: Sustained.

17 Q. Sir, am I correct that upon his release, Mr. Suquisupa left
18 the country and avoided prosecution in Ecuador?

19 MR. BOOTH: Objection. Form.

20 THE COURT: If you know, sir.

21 A. I don't know.

22 Q. Am I correct, sir, that the Ecuadorian prosecutors wanted
23 Mr. Suquisupa to be detained pending trial?

24 MR. BOOTH: Objection. Form.

25 THE COURT: Sustained as to form.

DB68CHE3

Zambrano - direct

1 Q. Did you know at the time you issued your appellate ruling
2 that Ecuadorian prosecutors argued in favor of detaining
3 Mr. Suquisupa pending trial?

4 MR. BOOTH: Objection. Form.

5 THE COURT: Sustained as to form.

6 Q. Sir, isn't it a fact that the reason you released
7 Mr. Suquisupa is because you received a bribe from the FARC?

8 A. No.

9 Q. Sir, this isn't the only time that the judicial council
10 found you to have committed a violation that required your
11 removal from your judicial post, is it, sir?

12 MR. BOOTH: Objection.

13 THE COURT: I take it this is offered for the same
14 purpose that we had the long side bar.

15 MR. MASTRO: Correct.

16 THE COURT: Overruled.

17 Q. Sir, do you remember the *Mancheno* case?

18 A. More or less.

19 Q. Sir, isn't that a case that came before the judicial
20 council?

21 Is that a case that came before the judicial council
22 on disciplinary charges against you?

23 A. Yes.

24 MR. BOOTH: Objection. Relevance.

25 MR. MASTRO: May I approach the witness, your Honor?

DB68CHE3

Zambrano - direct

1 THE COURT: Yes.

2 The relevance is what I previously discussed.

3 Q. I am handing the witness what has been marked as
4 Plaintiff's Exhibit 6321. The Spanish starts on page 10. The
5 resolution starts at the bottom of page 7 onto page 8.

6 MR. GOMEZ: My understanding is this document is not
7 in evidence, but it is being displayed.

8 Q. Mr. Zambrano, is this a copy of the judicial council's
9 decision, dated May 22, 2012, in which the judicial council
10 imposed on you the sanction of removal?

11 MR. BOOTH: Objection to discussion of the document.
12 It's not in evidence.

13 THE COURT: Rephrase the question.

14 Q. Mr. Zambrano, is this the judicial council's May 22, 2012
15 decision regarding a disciplinary complaint against you in the
16 *Mancheno* case?

17 A. Yes.

18 MR. MASTRO: I ask that it be received in evidence.

19 MR. BOOTH: Objection. Relevance. Hearsay.

20 THE COURT: Is this being offered for the limited
21 purpose on the basis of which I received 411?

22 MR. MASTRO: Yes, it is.

23 THE COURT: Do you propose to go the same place with
24 this that you went with the other one?

25 MR. MASTRO: It won't be necessary.

DB68CHE3

Zambrano - direct

1 THE COURT: Then I need to understand what you're
2 doing.

3 (Continued on next page)
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DB68CHE3

Zambrano - direct

1 (At the side bar)

2 MR. MASTRO: Your Honor, on this particular
3 disciplinary infraction, I am not planning to do the same line
4 of questioning. It's only being offered on the basis that, not
5 for the truth of the matters asserted, but it relates to the
6 conundrum we described before. The situation of he is removed
7 from his office by the government for inexcusable conduct and
8 then he gets this cushy government job and is totally beholden
9 to the government. So he has got two situations. Not just the
10 first, not just the drug case, but also this case, where he has
11 been removed from office, the government has found him to have
12 engaged in misconduct, and yet the sequence of events occurs
13 where he gets his government job back and now he is testifying.
14 I intend to impeach him later with him getting the government
15 job and this shows his bias.

16 THE COURT: Mr. Booth.

17 MR. BOOTH: It's hearsay. He says it's not for the
18 truth of matter, but he is offering it for the truth of the
19 matter.

20 THE COURT: No, he is not.

21 MR. BOOTH: It sounds to me like he was, in the sense
22 that he can do the same thing by talking about the fact that he
23 doesn't have his job. I would make the same arguments I made
24 earlier.

25 THE COURT: The essence of the argument, as I

DB68CHE3

Zambrano - direct

1 understand it, essentially is that it's a matter of bias and
2 interest on the part of the witness, not only because he has a
3 job and because the government is his employer and has taken a
4 position on this case, but it goes also to the likelihood that
5 there is any other source of professional employment for this
6 man having been removed from office twice for professional
7 misconduct by the government.

8 I remember your side suggesting, and possibly making
9 outright, the argument that Guerra's motive here was that,
10 having been removed from office, he was essentially
11 unemployable, and he sold himself to Chevron. Well, I perceive
12 a parallel argument here that this man, having been removed
13 from office is essentially unemployable, at least
14 professionally, and along comes the government, which clearly
15 has a horse in this race, and gives him a job. It seems to me
16 it's relevant.

17 (Continued on next page)

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DB68CHE3

Zambrano - direct

(In open court)

THE COURT: Plaintiff's 6321 is received not for the truth of the matters asserted, but on the limited basis referred to at the side bar on this and in the discussion of Plaintiff's Exhibit 411.

(Plaintiff's Exhibit 6321 received in evidence)

BY MR. MASTRO:

Q. Mr. Zambrano, you have denied ever receiving or soliciting a bribe in your career as a prosecutor or a judge; that's your testimony, right?

MR. BOOTH: Objection. Asked and answered.

THE COURT: I don't think it was asked and answered, but I am going to sustain the objection on other grounds, as to form.

Q. Sir, isn't it a fact that you have been publicly accused on a dozen or more occasions of soliciting or accepting bribes?

MR. BOOTH: Objection. Relevance.

THE COURT: Sustained.

Q. Sir, isn't it a fact that while you were a prosecutor, you had a reputation in the legal community for taking bribes?

MR. BOOTH: Objection. Relevance.

THE COURT: Sustained.

MR. MASTRO: Your Honor, may I approach the side bar?

THE COURT: Yes.

(Continued on next page)

DB68CHE3

Zambrano - direct

1 (At the side bar)

2 MR. MASTRO: Your Honor, this is really a 608(a)
3 issue.

4 THE COURT: Then let me get my rule book. I am not
5 going to submit to a quiz.

6 MR. MASTRO: I love your quizzes every day, your
7 Honor.

8 THE COURT: I bet you do.

9 MR. MASTRO: Bribery case law, *United States v.*
10 *Wilson*, Seventh Circuit --

11 THE COURT: I am just reading the rule.

12 OK. Go ahead, Mr. Mastro.

13 MR. MASTRO: Bribery and other accusations of similar
14 abuse of power in office are probative of a witness's character
15 for truthfulness or untruthfulness in a permissible area of
16 inquiry under Rule 608(a). *United States v. Wilson* and *United*
17 *States v. Bustamante*.

18 What I am about to do is I am going to ask him these
19 questions about his reputation in the legal community. And
20 then we have complaints against him, when he was in the NAPO
21 prosecutor's office, from over 30 members of the bar in one
22 instance in a small legal community, and then the bar
23 association itself, that he is a person who has a professional
24 career of extortion, blackmail and shame and should be removed
25 from office. And then the bar association saying that he lacks

DB68CHE3

Zambrano - direct

1 the integrity and has lost credibility to perform the job of
2 NAPO district prosecutor. So I believe that under 608(a),
3 that's his reputation in the community.

4 THE COURT: How is he competent to testify what his
5 reputation in the community is?

6 MR. MASTRO: I have right to impeach when he denies
7 it. I have the right to impeach him with these documents.

8 MR. BOOTH: This is complete hearsay. There is no way
9 you can impeach him with something. We can't cross-examine
10 these people. He didn't write these things. This is just
11 trying to backdoor in just slanderous stuff that we don't even
12 know where this comes from.

13 THE COURT: We are not going here, Mr. Mastro.

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DB68CHE3

Zambrano - direct

(In open court)

BY MR. MASTRO:

Q. Mr. Zambrano, directing your attention back to the *Aniversario* case, were you aware in November 2009 that the commander of the organized crime prevention unit had filed a disciplinary complaint with the prosecutor general against you and Judge Ordonez?

MR. BOOTH: Objection. Form and relevance.

THE COURT: Certainly sustained as to form.

Q. Sir, back in November of 2009, did you become aware that a disciplinary complaint had been filed against you?

MR. BOOTH: Same objection, your Honor.

THE COURT: Back in November of 2009, Mr. Zambrano, did you become aware whether a disciplinary complaint had been filed against you?

MR. BOOTH: I would object. Relevance.

THE COURT: Now we get into the substance.

Now, I hate to do this. This is eating up time like crazy, but side bar.

(Continued on next page)

DB68CHE3

Zambrano - direct

1 (At the side bar)

2 THE COURT: Just in case nobody knew, there are no
3 frequent flier miles for coming to the side bar.

4 MR. MASTRO: I appreciate that, your Honor.

5 THE COURT: We don't even offer kosher meals.

6 MR. MASTRO: I understand.

7 THE COURT: Get on with it. What is this?

8 MR. MASTRO: I believe that I will be able to
9 establish, if I get honest answers, that the witness was aware
10 that such a disciplinary charge was pending against him. In
11 fact, your Honor, the time sequence is such he became the
12 provincial representative on the judicial council. The case
13 was at one time assigned to him to review his own disciplinary
14 case.

15 THE COURT: So what?

16 MR. MASTRO: Because, your Honor, the case got put in
17 limbo at the judicial council from 2010 to two days after the
18 judgment issued on February 16, 2011, and only then was there a
19 full investigation of the charge. So that this was hanging
20 over his head for the entire time that he was drafting the Lago
21 Agrio judgment.

22 THE COURT: This is a disciplinary charge by?

23 MR. MASTRO: This is the *Aniversario* case, the drug
24 case. The local prosecutors and police and drug enforcement
25 had filed the charge with the prosecutor's office. The

DB68CHE3

Zambrano - direct

1 prosecutor refers it to the judicial council. And then the
2 judicial council assigns it out first to Ordonez, then to
3 Zambrano. There is a recommendation internally at the judicial
4 council by staff for this gentleman to have formal charges
5 investigated against him. It sits in limbo from late 2010,
6 when he went on the judicial council, until two days after the
7 judgment.

8 THE COURT: It seems to me you're making two arguments
9 or two suggestions. One suggestion is he had something to do
10 with keeping the charge against himself on the back burner.
11 The second suggestion is that, independent of whether it was on
12 the back burner, it was out there when he decided the Chevron
13 case, and that's significant.

14 MR. MASTRO: I am suggesting, your Honor, actually
15 something that's a hybrid of the two. He knew the charge was
16 out there against him and the government, the judicial council,
17 kept this hanging over his head to make sure that he did their
18 bidding on the case, and only pursued the disciplinary charge
19 to full investigation and action after he had done their
20 bidding. So this man had an incentive to lie and roll over and
21 do whatever the government wanted him to because the Lago Agrio
22 plaintiffs were in collusion with the government.

23 So I think that sequence shows a sword of Damocles
24 hung over this guy's head while he was doing the government's
25 bidding on the Lago Agrio case.

DB68CHE3

Zambrano - direct

1 THE COURT: Do you have any evidence of any
2 interaction between the plaintiffs in Ecuador and the
3 government on this issue?

4 MR. MASTRO: I don't have specific evidence of
5 interaction between the government and the Lago Agrio
6 plaintiffs on this particular issue. We have highly suspicious
7 circumstances, your Honor, where the charge is actually
8 referred to him to investigate himself.

9 MR. FRIEDMAN: I am reminded, your Honor, of your
10 comments earlier in the trial about how a corporation doesn't
11 have a state of mind. It's not a unitary thing, if you will.

12 Mr. Mastro keeps referring to the Ecuadorian
13 government as if it's a unitary, single-minded thing, with no
14 connecting up between the plaintiffs and the judicial council
15 or whoever it is that made this complaint. I don't think he
16 has made the connection that makes any of this relevant.

17 THE COURT: The problem is there is evidence in the
18 record already about a lack of judicial independence in
19 Ecuador, and whether it's enough to draw the inference that he
20 wants to draw is another matter, but there is some evidence.

21 Now, you were bursting, Mr. Booth.

22 MR. BOOTH: I don't find it relevant. My perception,
23 rightly or wrongly, is that these seem like wild stories that
24 are being concocted to get in evidence that would not otherwise
25 be appropriate under the rules as other bad acts, and we have

DB68CHE3

Zambrano - direct

1 now given the government this, as Mr. Mastro said, mind-set to
2 hold a sword of Damocles over his head so he would do what they
3 wanted him to do.

4 THE COURT: It could actually be as simple as his
5 understanding that it was out there and fearing the government,
6 whether the government thought about it for two seconds or not.

7 MR. BOOTH: You asked me. I think it's a wild reach.
8 I don't think it makes any of this relevant. I don't think
9 coming up with a possible story of what could have been is an
10 inference. I don't think it's supported in any way in good
11 faith by any of the evidence. If they had a witness come in to
12 say any of this, that he did something, or somebody on his
13 behalf did something, but just accusing him with a question now
14 becomes the evidence because they just say it.

15 THE COURT: Look, I understand that if there were a
16 jury here, that would be an argument a lawyer appropriately
17 would make, but there isn't. It wouldn't be right anyway, but
18 it would be an appropriate argument. I have heard the whole
19 story here at the side bar, and now we are arguing about the
20 question being the evidence. That's silly. I don't mean to be
21 unkind. I just don't find it persuasive.

22 MR. BOOTH: This witness has been on the stand. My
23 perception is this is also intended potentially to beat him up,
24 to try to get answers or change his demeanor, and I do think
25 this is an unfair line to make these being accusations, which I

DB68CHE3

Zambrano - direct

1 don't believe are founded in the evidence. And that would be
2 the last point I would make.

3 MR. GOMEZ: If there were connections like you asked
4 for, then there would be something to go here, but it is just
5 innuendo. There are two sequence of events, they are
6 unrelated, and there is no evidence whatsoever connecting the
7 two except argument.

8 THE COURT: What is the best you have to draw the
9 connection?

10 MR. MASTRO: There is evidence in the documents of Mr.
11 Fajardo supporting Mr. Zambrano to get the position as the --

12 THE COURT: I'm sorry. Mr. Fajardo?

13 MR. MASTRO: Mr. Fajardo supporting Mr. Zambrano in
14 getting the position of being the provincial representative on
15 the judicial council, which obviously helps scotch the
16 disciplinary action from going forward.

17 In any event, the principal reason I am trying to
18 establish is he knew this charge was hanging over him, and he
19 said he knew there was always that pressure that he better do
20 what the government wanted him to do.

21 THE COURT: What else do you have of this kind?

22 MR. MASTRO: This is my last area before I go into new
23 employment.

24 THE COURT: I think we are not going to go down this
25 path.

DB68CHE3

Zambrano - direct

1 (In open court)

2 THE COURT: Mr. Zambrano, I gather my colleague here
3 has provided you with a space heater, is that right?

4 THE WITNESS: Yes, sir.

5 THE COURT: Would you like a cup of hot tea? You look
6 like you are very cold.

7 THE WITNESS: You're very kind, but I have it here.

8 THE COURT: Let's proceed.

9 MR. MASTRO: Thank you, your Honor.

10 THE COURT: OK, Mr. Mastro.

11 MR. MASTRO: Thank you, your Honor.

12 BY MR. MASTRO:

13 Q. Mr. Zambrano, what was your starting salary as a
14 prosecutor?

15 MR. BOOTH: Objection. Relevance.

16 THE COURT: I think it's too remote in time.
17 Sustained.

18 Q. When you became a judge in 2008, what was your starting
19 salary as a judge, sir?

20 MR. BOOTH: Objection. Relevance.

21 THE COURT: Overruled.

22 A. 3500.

23 THE COURT: 3500 what?

24 THE WITNESS: \$3500 per month.

25 THE COURT: Is that U.S. dollars?

DB68CHE3

Zambrano - direct

1 THE WITNESS: Yes.

2 Q. Am I correct, sir, that you're currently working at the
3 Refinery of the Pacific?

4 A. Yes.

5 Q. And you are a legal analyst for the Refinery of the
6 Pacific, correct, sir?

7 A. No.

8 Q. Am I correct, sir, that you're a legal adviser with the
9 Refinery of the Pacific?

10 A. Yes.

11 Q. That's a job you assumed around May of this year 2013?

12 A. Yes.

13 Q. Sir, am I correct that the Refinery of the Pacific is a
14 joint venture?

15 MR. BOOTH: Objection. Form.

16 THE COURT: Overruled.

17 A. Can you please clarify joint, with whom, with what?

18 Q. The Refinery of the Pacific has more than one owner,
19 correct?

20 A. Yes.

21 Q. And Petroecuador is one of the owners of Refinery of the
22 Pacific, correct?

23 A. No.

24 Q. Does Petroecuador have any ownership interest in the
25 Refinery of the Pacific?

DB68CHE3

Zambrano - direct

1 MR. BOOTH: Objection. Form.

2 THE COURT: Overruled.

3 A. It is a stockholder.

4 Q. Petroecuador is owned by the Ecuadorian government,
5 correct?

6 A. Yes.

7 Q. Am I also correct that under Ecuadorian law, that companies
8 that have multiple owners in a strategic sector, the Ecuadorian
9 government must always have a majority share?

10 MR. BOOTH: Objection. Form.

11 THE COURT: See if you can phrase it more clearly, Mr.
12 Mastro.

13 Q. Am I correct, sir, that under Ecuadorian law, companies
14 where the state has an ownership share with others in strategic
15 areas, the state must always have the majority share of
16 ownership?

17 MR. GOMEZ: Same objection.

18 THE COURT: Overruled.

19 A. Yes.

20 Q. And the oil industry is a strategic sector, correct, sir?

21 A. Yes.

22 Q. Am I correct, sir, that Petroecuador owns more than 50
23 percent of the shares of Refinery of the Pacific?

24 A. I don't know that for a fact.

25 Q. You work there as a legal analyst, correct, sir?

DB68CHE3

Zambrano - direct

1 MR. BOOTH: Objection. Form.

2 THE COURT: Sustained to form.

3 Q. Is it your testimony that you work for Refinery of the
4 Pacific but don't know whether Petroecuador owns a majority of
5 the shares?

6 MR. BOOTH: Objection. Form.

7 THE COURT: Overruled.

8 A. Yes.

9 Q. Sir, is there some reason why you don't know whether
10 Petroecuador owns a majority of the shares of Refinery of the
11 Pacific?

12 MR. BOOTH: Objection. Form.

13 THE COURT: Sustained.

14 Q. Sir, to your knowledge, did Petroecuador own a majority of
15 the shares of Refinery of the Pacific before the Chinese
16 invested in Refinery of the Pacific?

17 MR. GOMEZ: Objection. Form.

18 THE COURT: Overruled.

19 A. Would you kindly repeat the question?

20 Q. Sir, did Petroecuador, to your knowledge, own a majority of
21 the shares of the Refinery of the Pacific before the Chinese
22 invested in the Refinery of the Pacific?

23 A. I don't know that for a fact personally.

24 Q. Sir, isn't it a fact that Refinery of the Pacific posts on
25 its Web site the company directory of the employees and

DB68CHE3

Zambrano - direct

1 positions of the company?

2 MR. BOOTH: Objection. Form.

3 THE COURT: Overruled.

4 A. I don't know.

5 Q. Sir, I would like to show you what has been marked as PX
6 6357 and ask you, sir, if you can identify that as from the Web
7 site of Refinery of the Pacific?

8 A. I don't know.

9 MR. MASTRO: Can we scroll down the page?

10 Q. Do you see where it identifies you as a legal analyst and
11 gives your e-mail address at the Refinery of the Pacific?

12 MR. BOOTH: Objection. Form. The document not in
13 evidence.

14 THE COURT: Sustained.

15 Q. Sir, have you ever gone on the Web site of Refinery of the
16 Pacific?

17 Have you ever been on the Web site of the Refinery of
18 the Pacific?

19 A. No.

20 Q. Sir, is that your e-mail address at Refinery of the Pacific
21 on the right-hand side of this document?

22 MR. BOOTH: Objection to form. Discussing a document
23 not in evidence.

24 THE COURT: Let's see if we can imagine another way to
25 get what his Internet address is.

DB68CHE3

Zambrano - direct

1 MR. MASTRO: I am going to connect this.

2 THE COURT: I have no doubt about that. But can't you
3 all agree on what these rather basic and apparently publicly
4 available facts are?

5 MR. MASTRO: I am happy to discuss it with them.

6 THE COURT: Why don't you do that?

7 MR. BOOTH: Right now?

8 THE COURT: The name of the game is not how long we
9 can run this out.

10 MR. BOOTH: I don't have personal knowledge of this.

11 THE COURT: There ought to be a way to deal with this.

12 MR. MASTRO: I will be very quick.

13 Q. Mr. Zambrano, what is your e-mail address?

14 A. [REDACTED].

15 Q. Sir, what is your e-mail at Refinery of the Pacific?

16 A. I don't have one.

17 Q. What is your work address at the Refinery of the Pacific?

18 THE COURT: Just a minute.

19 Is there any objection to my telling the reporter to
20 seal the fragment of the transcript with his e-mail address so
21 it doesn't wind up on the Internet?

22 MR. MASTRO: There is no objection.

23 MR. BOOTH: No objection.

24 THE COURT: That much will be sealed. I will ask the
25 press, if there are any here, to exercise restraint, lest this

DB68CHE3

Zambrano - direct

1 man get more e-mails than anyone.

2 THE WITNESS: Thank you.

3 Q. Mr. Zambrano, what is your work address, sir, at Refinery
4 of the Pacific?

5 A. Flavio Reyes Avenue, between 28th and 29th Street, 8th
6 floor, at the Platinum Building.

7 Q. The same address that appears on this document, correct,
8 sir?

9 MR. BOOTH: Objection.

10 A. It's missing the 8th floor there.

11 Q. Thank you.

12 Sir, do you know whether you have an e-mail address at
13 Refinery of the Pacific and you just don't use it?

14 A. I'm not aware that I have had an e-mail.

15 Q. Sir, on this same line, it refers to analista legal, number
16 73. Is that accurate description of your job, sir, at Refinery
17 of the Pacific?

18 MR. BOOTH: Objection, your Honor. Use of a document
19 not in evidence.

20 THE COURT: Overruled.

21 He is allowed to ask questions from it. He is not
22 allowed to put the substance of the document in. If somebody
23 wants to ask a question about Henry VIII, it is permissible to
24 look him up in the Encyclopedia Britannica without offering the
25 Encyclopedia Britannica into evidence.

DB68CHE3

Zambrano - direct

1 MR. BOOTH: My objection was he is referring to the
2 document.

3 THE COURT: Let's focus on what is important, please.

4 A. No.

5 Q. Sir, I would like to show you what has been marked as
6 Plaintiff's Exhibit 6360.

7 Sir, do you recognize this as a document coming from
8 the Refinery of the Pacific Web site?

9 A. No.

10 Q. The document on line 73 legal, legal analyst, it says 1500
11 as the salary. Do you see that, sir?

12 MR. BOOTH: Objection.

13 Q. Sir, the document on line number 73 --

14 THE COURT: What is the question, Mr. Mastro?

15 Q. The question, your Honor, is, the document at line 73
16 identifies the legal analyst salary as 1500 a month. Is that
17 your salary, sir?

18 MR. BOOTH: Objection.

19 THE COURT: Sustained. He already told us his salary.

20 Q. What is your annual salary at Refinery of the Pacific?

21 MR. BOOTH: Objection. Relevance.

22 THE COURT: Overruled.

23 A. The contract states that it is 46,000 per year.

24 Q. Sir, I would like to show you what has been marked as
25 Plaintiff's Exhibit 6361.

DB68CHE3

Zambrano - direct

1 Sir, am I correct that you have a contract with
2 Refinery of the Pacific that guarantees you an annual salary of
3 \$46,000?

4 THE COURT: That's what he just said.

5 Q. Is your position, sir, defined as providing legal advice
6 specializing in international relations?

7 MR. BOOTH: Objection if it is referring to the
8 document.

9 THE COURT: Overruled.

10 What do you mean if it's referring to the document?
11 He asked him a question.

12 MR. BOOTH: I think he is referring to a document not
13 in evidence. I apologize.

14 THE COURT: Henceforth, all lawyers must ask questions
15 without any notes and without any outlines and without
16 reference to any books. That's the implication you are making.

17 MR. BOOTH: I apologize.

18 A. Could you please repeat the question?

19 Q. Yes, sir.

20 Is your position, sir, at Refinery of the Pacific
21 defined as providing legal advice specializing in international
22 relations?

23 A. It's false.

24 Q. Sir, what legal advice is it that you provide for Refinery
25 of the Pacific?

DB68CHE3

Zambrano - direct

1 A. Relating to community relations, labor issues,
2 constitutional, and pertaining to activities in which the
3 employees have an interest or are interested in.

4 Q. Sir, am I correct that in the Lago Agrio Chevron judgment,
5 you excluded Petroecuador from any responsibility for the harms
6 found in the judgment?

7 THE COURT: That would be in the judgment, would it
8 not?

9 MR. MASTRO: I am asking if he knows that.

10 THE COURT: All right.

11 A. Yes.

12 Q. Mr. Zambrano, based on your knowledge of the facts of the
13 Lago Agrio case, and the research that you did to prepare the
14 judgment in the Lago Agrio Chevron case, can you provide any
15 estimate of how much money you saved Petroecuador by making
16 that finding in the judgment?

17 MR. BOOTH: Objection. Form.

18 THE COURT: Overruled.

19 MR. GOMEZ: Objection. It assumes.

20 THE COURT: I couldn't understand the second word.

21 MR. GOMEZ: It assumes facts.

22 THE COURT: Rephrase it. Sustained.

23 Q. Did you save Petroecuador money by that finding you made in
24 the judgment?

25 MR. BOOTH: Objection. Form.

DB68CHE3

Zambrano - direct

1 THE COURT: Overruled.

2 A. No.

3 Q. Sir, I want to take you back to February 14, 2011.

4 That was a big day in your life, correct, sir?

5 THE COURT: Sustained.

6 Q. Sir, were you at a press conference on February 14, 2011?

7 A. Yes.

8 Q. Was the president of the judicial council, Benjamin
9 Cevallos, also at that press conference?

10 A. Yes.

11 Q. And do you recall him saying that day in your presence to
12 the press that today you are a star?

13 MR. BOOTH: Objection. Relevance.

14 A. I don't recall.

15 Q. Do you recall him saying in your presence that day that you
16 are "a judge who knows how to fulfill his obligations"?

17 A. I don't recall.

18 Q. Do you recall him saying in your presence that day that
19 "you have not received any guidance of any sort"?

20 A. I don't recall.

21 Q. Do you recall him saying that day in your presence that you
22 had issued "an outstanding ruling that meets the needs of all
23 citizens of Ecuador"?

24 A. I don't recall.

25 Q. Isn't it also the case, sir, that that same day you heard

DB68CHE3

Zambrano - direct

1 President Correa say that your judgment in the Lago Agrio
2 Chevron case was "the most important judgment in the history of
3 the country"?

4 A. I don't recall.

5 Q. But a year later, February 2012, you were removed from your
6 judicial post by the judicial council, correct?

7 A. Yes.

8 Q. And by mid-2012, you knew how important your testimony
9 would be in this case, correct, sir?

10 MR. BOOTH: Objection. Form.

11 THE COURT: Rephrase it.

12 Q. By mid-2012, Mr. Zambrano, you realized that you had
13 testimony to give in this case, correct, sir?

14 A. No.

15 Q. Isn't it a fact, sir, that in June, July, August of 2012,
16 you spoke to Mr. Guerra about giving evidence in this case?

17 A. I don't recall.

18 Q. Isn't it a fact, sir, that during that same period, June,
19 July, August 2012, you were talking to Mr. Fajardo and the U.S.
20 lawyers for the Lago Agrio plaintiffs about giving testimony in
21 this case?

22 A. I don't recall.

23 Q. Sir, you were out of a job in 2012 after you got removed
24 from your judicial post, correct?

25 A. Yes.

DB6LCHE4

Zambrano - direct

1 Q. And then in March 2013, you gave the Lago Agrio plaintiffs'
2 lawyers a declaration, correct?

3 A. I did give one, but I don't recall the date.

4 Q. And by May 2013, you had yourself a job for \$46,000 a year
5 at Refinery of the Pacific, which is owned in large part by
6 Petroecuador, correct, sir?

7 MR. GOMEZ: Objection, form.

8 THE COURT: Sustained as to form. Break it down.

9 Q. Sir, by May of 2013, you had a job with Refinery of the
10 Pacific, correct?

11 MR. GOMEZ: Objection, asked and answered.

12 THE COURT: Overruled.

13 A. False.

14 Q. In mid-2013, you got a job with Refinery of the Pacific,
15 correct?

16 A. False.

17 Q. Sir, you work for Refinery of the Pacific today, correct?

18 A. Yes.

19 Q. And you got that job a few months ago, correct?

20 MR. GOMEZ: Objection, form.

21 THE COURT: Overruled.

22 A. I started in the month of April and the contract was signed
23 in May.

24 Q. Thank you for that clarification, sir. And Refinery of the
25 Pacific is owned in substantial part by Petroecuador, correct?

DB6LCHE4

Zambrano - direct

1 MR. GOMEZ: Objection, form, asked and answered.

2 THE COURT: Rephrase it.

3 Q. Refinery of the Pacific is owned in part by Petroecuador,
4 correct?

5 MR. GOMEZ: Objection, asked and answered.

6 THE COURT: Overruled.

7 A. Yes.

8 Q. And Petroecuador is owned by the Ecuadorian government,
9 correct?

10 THE COURT: Haven't we established that?

11 MR. MASTRO: Yes, your Honor.

12 THE COURT: Next question.

13 Q. And now you're here today testifying in this case?

14 THE COURT: Well, that's evident.

15 MR. MASTRO: Thank you, your Honor. Thank you, your
16 Honor.

17 Q. And you know today that the Republic of Ecuador is
18 supporting the Lago Agrio plaintiffs in this litigation,
19 correct, sir?

20 MR. BOOTH: Objection, form.

21 THE COURT: Overruled.

22 A. I don't know.

23 Q. And you know today that the Republic of Ecuador is
24 litigating against Chevron in an international treaty
25 arbitration, correct, sir?

DB6LCHE4

Zambrano - direct

1 MR. BOOTH: Objection, relevance, form.

2 THE COURT: Overruled.

3 A. No.

4 Q. And you know today, sir, that your job literally hangs in
5 the balance by your testimony, correct?

6 A. No.

7 MR. MASTRO: No further questions of this witness,
8 your Honor.

9 THE COURT: Thank you, Mr. Mastro. I think maybe it's
10 a good time to break for lunch. 2 o'clock.

11 (Luncheon recess)

12 (Continued on next page)

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DB6LCHE4

AFTERNOON SESSION

2:18 p.m.

THE COURT: Do I take it we've concluded the cross?

MR. MASTRO: Yes, your Honor.

THE COURT: Let me ask one other question then before we proceed. I guess we concluded the direct.

I was just given a proposed order imposing conditions on Mr. Tarco and Ms. Calva.

Does everybody agree that this accurately reflects the order I issued?

MS. FRIEDMAN: Yes, your Honor.

THE COURT: Mr. Gomez?

MR. GOMEZ: Yes, your Honor.

THE COURT: Mr. Mastro?

MR. MASTRO: Yes, your Honor.

THE COURT: Okay. I'm signing it then.

All right, Mr. Booth. You may proceed.

MR. BOOTH: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. BOOTH:

Q. Good afternoon.

A. Good afternoon.

Q. How do you like to be referred, doctor or mister or judge?

A. It's whatever you like.

Q. All right. Dr. Zambrano, I'm Rainey Booth. I'm going to

DB6LCHE4b

Zambrano - cross

ask you a few questions this afternoon.

Dr. Zambrano, did you ever solicit a bribe in the Lago Agrio Chevron case from anyone?

A. Never, from no one.

Q. Did you ever agree to accept a bribe in the Lago Agrio Chevron case from anyone?

A. I would never do so because it would go against my principles.

Q. Did you ever agree for payment or the promise of payment to allow someone else to write a part of the Lago Agrio Chevron judgment?

A. No.

Q. Can you tell us whether or not you ever agreed in exchange for payment or the promise of payment to, in the Lago Agrio Chevron case, to rule in favor of one particular party?

MR. MASTRO: Objection, asked and answered.

THE COURT: Overruled.

A. Never. As I've stated, that would go against my principles.

Q. Dr. Zambrano, why did you agree to come to New York to testify in this case?

A. There were many reasons. Mainly because Dr. Alberto Guerra had made or given statements that were not, that were not close to reality.

Q. Any other reasons why you agreed to come testify in New

DB6LCHE4b

Zambrano - cross

1 York?

2 A. Initially when I had to give a deposition in Peru, that was
3 not feasible. When I was summoned once again, I stated that I
4 wanted it to be a order by the judge, through an order by the
5 judge and not from one of the parties because I have nothing to
6 discuss with anyone regarding the judgment that I issued.

7 However, if the judge were to order my appearance, I am willing
8 to continue stating the truth.

9 Q. Dr. Zambrano, can you tell us whether or not you are here
10 in New York testifying because someone is paying you to give
11 testimony?

12 A. I am testifying as to the truth because, as I have stated,
13 because, as I have stated, Dr. Alberto Guerra made false
14 statements and that's what I stated in writing and that is why
15 I am here testifying to the truth.

16 Q. Dr. Zambrano, I represent Mr. Donziger. Have you ever met
17 Steven Donziger?

18 A. Personally, never.

19 Q. Have you ever spoken to Steven Donziger personally?

20 A. Never.

21 Q. I need to go back and get an answer to an earlier question.

22 Can you tell me, Dr. Zambrano, whether or not you are
23 here in New York testifying because someone is paying you to
24 testify?

25 A. No one has paid me, nor would I accept that.

DB6LCHE4b

Zambrano - cross

1 Q. Dr. Zambrano, I want to go through and ask you about some
2 facts and ask you to tell me if they are true or not.

3 First, can you tell me whether or not at any time
4 prior to February 14, 2011, you met Mr. Guerra at the Quito
5 airport and gave him a thumb drive with a draft version of the
6 judgment in the Lago Agrio Chevron case, did that ever happen?

7 MR. MASTRO: Objection, leading. And form.

8 THE COURT: Well, Mr. Booth?

9 MR. BOOTH: I asked whether or not, your Honor. Look,
10 I'm being very specific, but I asked whether or not. I didn't
11 suggest an answer, but I am being specific because it is a
12 specific question I'm asking.

13 THE COURT: Leading questions always are.

14 MR. BOOTH: Your Honor, a leading question suggests an
15 answer. I'm asking whether or not that happened, but I'm not
16 suggesting which answer.

17 MR. MASTRO: Your Honor, I will be educated on the
18 subject to use that same formulation every time I want to lead
19 a witness if he can do that. It's leading.

20 THE COURT: I'm going to allow this question. We'll
21 see where it goes. I would state, Mr. Booth, that among the
22 factors that I may ultimately consider in evaluating the
23 credibility of the testimony is the extent to which I believe
24 the questions have suggested answers. If you want this
25 question, you've got it.

DB6LCHE4b

Zambrano - cross

MR. BOOTH: I do, your Honor. Thank you.

THE COURT: Go ahead.

Q. Do you recall the question or would you like me to repeat it?

THE INTERPRETER: Could you please repeat it.

Q. Dr. Zambrano, you can tell me whether or not you at any time prior to February 14, 2011, met with Mr. Guerra at the Quito airport and gave him a thumb drive with a draft version of the judgment in the Lago Agrio Chevron case, did that ever happen?

A. No.

Q. Dr. Zambrano, can you tell me whether you ever, ever gave Mr. Guerra a thumb drive with the Lago Agrio Chevron judgment on it and asked him to revise that judgment?

MR. MASTRO: Objection, leading, form, compound.

THE COURT: Sustained as to compound.

Q. Dr. Zambrano, did you ever give Mr. Guerra or can you tell me -- strike that.

Dr. Zambrano, can you tell me whether or not you ever gave Mr. Guerra a thumb drive or flash drive with the Lago Agrio Chevron judgment on it asking -- sorry, I did it again.

Can you tell me whether or not you ever gave Mr. Guerra a thumb drive or flash drive with the Lago Agrio Chevron judgment on it, ever?

A. Never.

DB6LCHE4b

Zambrano - cross

1 Q. Dr. Zambrano, can you tell me whether or not you ever asked
2 Mr. Guerra to make revisions to the Lago Agrio Chevron verdict,
3 judgment, before it was signed by you February 14, 2011?

4 A. Never.

5 Q. Can you tell me whether or not Mr. Guerra ever gave you a
6 flash drive or thumb drive with the Lago Agrio Chevron judgment
7 or any draft of that judgment, ever?

8 MR. MASTRO: Objection, leading, form, compound.

9 THE COURT: I'll allow it.

10 A. No.

11 Q. Can you tell me whether or not at any time you asked
12 Mr. Guerra to come to Lago Agrio to work on revising the
13 judgment in the Lago Agrio Chevron case?

14 A. No.

15 Q. Did Mr. Guerra -- can you tell me whether or not Mr. Guerra
16 ever worked in your apartment in Lago Agrio on the Lago Agrio
17 Chevron judgment?

18 A. Never.

19 Q. Did Pablo Fajardo -- strike that.

20 Can you tell me whether or not Pablo Fajardo ever
21 provided Mr. Guerra with a laptop computer in your apartment in
22 Lago Agrio?

23 A. No.

24 Q. To your knowledge, can you tell me whether or not
25 Mr. Guerra ever worked on the Chevron Lago Agrio judgment on a

DB6LCHE4b

Zambrano - cross

1 laptop computer in your apartment?

2 A. He never did that.

3 Q. Can you tell me whether or not to your knowledge Mr. Guerra
4 ever worked on the Lago Agrio Chevron judgment at any time?

5 A. Never.

6 Q. I want to ask you just a few questions about your
7 relationship with Mr. Guerra, Mr. Alberto Guerra.

8 Was there a time in -- well, was there a time when you
9 trusted Mr. Guerra?

10 A. Yes.

11 Q. And can you briefly describe your relationship with
12 Mr. Guerra during that period of time?

13 MR. GOMEZ: Objection to the translation.

14 MR. BOOTH: I'll rephrase the question.

15 Q. Can you tell us, give us a time frame when you -- that
16 you've known Mr. Guerra?

17 A. Since the time he arrived as a provincial judge of the
18 Sucumbios court and I had the position as a prosecutor. I've
19 known him since that time.

20 Q. Do you recall about what date that was, what year that was?

21 A. I was appointed in 1994 and he arrived around -- it could
22 be around three years after I had been appointed he arrived,
23 approximately.

24 Q. During the time that you were acting as a judge in Lago
25 Agrio, were there ever occasions where you allowed Mr. Guerra

DB6LCHE4b

Zambrano - cross

1 to remain in your office when you were not there?

2 A. Yes.

3 Q. Under what circumstances would that have happened?

4 MR. MASTRO: Objection, form.

5 THE COURT: Sustained. Form.

6 Q. Under what circumstances did that happen?

7 A. Regularly when I would go to a hearing, to the oral
8 hearings.

9 Q. And did you trust Mr. Guerra to allow him to remain in your
10 office while you were not there?

11 A. Yes.

12 Q. During the time you were a judge in Lago Agrio, did you
13 ever allow Mr. Guerra to use your office computer?

14 A. Yes.

15 Q. Under what circumstances did you do that?

16 A. Because he was practicing the profession and by chance he
17 was in the courthouse and he would ask me to work while I was
18 at the hearings saying that he had to do some writing or
19 something like that. And because I trusted him, I allowed him
20 to be there with the condition that nobody else would go in.

21 Q. Do you recall what time frame it would have been that you
22 allowed Mr. Guerra to remain in your office and use your
23 computer?

24 MR. MASTRO: Objection to form.

25 THE COURT: Sustained as to form.

DB6LCHE4b

Zambrano - cross

1 Q. Do you recall during what time frame, during what period of
2 time you would allow Mr. Guerra to remain in your office
3 without you being there?

4 MR. MASTRO: Same objection, your Honor.

5 THE COURT: Same ruling. During what period did you
6 allow him to do that.

7 MR. BOOTH: You're right, Judge.

8 Q. During what period of time did you allow Mr. Guerra to
9 remain in your office while you were weren't there?

10 A. At different times when by chance we would be in Lago Agrio
11 and he would ask me to as a favor to let him be there because
12 he had to do some work. And using the opportunity that I was
13 going to a hearing, I would leave him there without any
14 problem.

15 MR. MASTRO: Your Honor, nonresponsive. Move to
16 strike.

17 THE COURT: Strike everything after "at different
18 times."

19 Q. Do you recall whether you allowed Mr. Guerra to remain in
20 your office while you weren't there during the year 2009?

21 A. I don't recall.

22 Q. Do you recall whether you allowed Mr. Guerra to remain in
23 your office when you weren't there during the year 2010?

24 A. I don't recall.

25 Q. Dr. Zambrano, do you recall being shown a deposit slip to

DB6LCHE4b

Zambrano - cross

1 Mr. Guerra's account that bore your signature yesterday when
2 you were being questioned?

3 A. Yes.

4 Q. Can you explain to the Court why there is a deposit slip to
5 Mr. Guerra's account with your name on it?

6 A. Yes.

7 Q. And will you do that, please.

8 A. Alberto Guerra would always tell me that he was facing a
9 very delicate financial situation and he asked me as a favor if
10 I could loan him around \$300. I had no problem with that. He
11 gave me the account number and I deposited it.

12 Q. Dr. Zambrano, you were asked about a case that I believe
13 had the initials OCP as or in the title of the case yesterday.

14 Do you remember those questions and your answers
15 regarding that case?

16 A. More or less.

17 Q. Can you explain to the Court -- well, strike that.

18 Do you recall your testimony yesterday about your
19 participation as a judge in the OCP case?

20 A. Yes.

21 Q. Can you explain to the judge, focusing on your
22 participation in the case, what happened in that case?

23 MR. MASTRO: Objection, calls for a narrative.

24 THE COURT: That's what testimony does.

25 A. Yes.

DB6LCHE4b

Zambrano - cross

1 Q. Will you do that, please.

2 A. It's a simple case. The lawsuit was dismissed because what
3 was being claimed were not environmental damages by those who
4 had filed the lawsuit, but rather they were personal damages
5 that have nothing to do with environmental issues. That's a
6 different procedure that has to be carried out. That's why it
7 was dismissed, as simple as that.

8 (Continued on next page)

DB68CHE5

Zambrano - cross

1 Q. Was what you just described to us the basis of your
2 decision to dismiss the case?

3 A. That is how it's stated in the unanimous, unanimity ruling
4 that was issued, and I was a member of the appellate court.

5 Q. How many other members of the appellate court were there on
6 this particular case, the OCP case?

7 A. Two other people.

8 Q. I want to ask you about Ms. Calva but first -- strike that.

9 Do you recall yesterday being asked about staff at the
10 courthouse in Lago Agrio?

11 A. Yes.

12 Q. Are there secretaries that work for the
13 courthouse -- strike that.

14 During the time you were a judge in Lago Agrio, were
15 there secretaries that worked at the courthouse for the
16 courthouse?

17 A. Yes.

18 Q. Let me focus you specifically on the period of time between
19 October 2010 and February 2011. Was what you just said have
20 been true for that period of time as well?

21 MR. MASTRO: Objection. Form.

22 MR. BOOTH: I did it again. I will rephrase.

23 Q. Specifically as to the time period of October 2010 to
24 February 2011, was what you said yesterday, did it apply to
25 that time period as well -- strike that.

DB68CHE5

Zambrano - cross

1 Between October 2010 and February 2011, were there
2 secretaries that worked at the courthouse in Lago Agrio?

3 A. Yes.

4 Q. Can you explain, to the best of your knowledge, what the
5 responsibilities of those secretaries were who worked for the
6 courthouse in Lago Agrio?

7 A. Yes.

8 Q. Would you do that, please?

9 A. In the courthouse includes the trial courts -- the
10 courthouse includes the trial courts, the tribunals of
11 guarantees where people are tried, and then the sole chamber,
12 and each one has its own secretary and assistant.

13 Q. Were the secretaries that worked at the courthouse in Lago
14 Agrio between October 2010 and February 2011, were they
15 available to help you with typing on your orders?

16 MR. MASTRO: Objection. Leading and asked and
17 answered.

18 THE COURT: Overruled.

19 But, Mr. Booth, remember what I said earlier.

20 MR. BOOTH: Yes, your Honor. Thank you.

21 A. No, because each fulfills different roles in their
22 respective offices.

23 Q. Can you explain to the Court why you made the decision to
24 hire Ms. Calva to assist you?

25 A. If I can tell him?

DB68CHE5

Zambrano - cross

1 Q. That's a bad question.

2 Will you explain to the Court why you made the
3 decision to hire Ms. Calva?

4 A. I haven't explained that.

5 Q. Will you do it now, please?

6 A. I can explain it.

7 Q. Please do.

8 A. Because it was a very voluminous trial. This young lady,
9 she was an excellent typist; she was very good at typing. She
10 also knew very much about the computing system. She had just
11 graduated or had just recently graduated, and her mother asked
12 me if she could help me in some kind of situation, and
13 precisely I needed help. That's why I made the proposal to her
14 that I could give her the \$15 per day, and the mother accepted
15 willingly.

16 Q. I want to ask you now about any notes or documents that you
17 used in drafting the judgment in the Lago Agrio Chevron case.
18 What happened to any such documents?

19 A. I kept in my possession all those notes and those series of
20 documents approximately for about a year. After that I
21 discarded them. It was no longer necessary for me to have it
22 in my possession.

23 Q. Was there any requirement under Ecuadorian law that you are
24 aware of that required you to keep any such notes or documents
25 longer than you kept them in this case?

DB68CHE5

Zambrano - cross

1 MR. MASTRO: Objection. Form. Leading.

2 THE COURT: Sustained.

3 Q. Can you tell me whether or not there is, to your knowledge,
4 any requirement under Ecuadorian law for you to maintain such
5 notes or documents for any prescribed period of time?

6 MR. MASTRO: Objection. Form. Leading.

7 THE COURT: I will take it for his state of mind.

8 A. No.

9 Q. Can you tell me whether or not you were aware of any reason
10 that you needed to keep such notes or documents for any
11 specific period of time?

12 MR. MASTRO: Objection. Form. Leading. Vague.
13 Asked and answered.

14 THE COURT: Overruled. If the examiner wants the
15 question, he can have the question.

16 A. Can you please repeat the question?

17 Q. Yes. Can you tell me whether or not you're aware of any
18 reason to have kept such notes or documents for any prescribed
19 period of time?

20 A. No.

21 Q. I want to take you to January 2011. Do you recall giving
22 some testimony about things you said to newspaper reporters in
23 January of 2011? Do you recall those questions and your
24 answers?

25 A. Yes.

DB68CHE5

Zambrano - cross

1 Q. When you indicated that you had lied to the newspaper
2 reporters that were asking you questions, can you explain to
3 the Court why you did that?

4 A. Yes.

5 Q. Would you do that?

6 A. One thing is to have a conversation, it's something else to
7 live at the moment. The reporters were harassing me
8 constantly, all the journalists, when am I going to issue the
9 judgment, when am I going to issue the judgment? And I said I
10 need approximately to read about 500 cuerpos still.

11 Specifically, to keep them from continuing to harass me, that
12 gave me the opportunity so they would believe that and they
13 wouldn't keep bothering me.

14 Q. Let me ask you about the orders that you issued in your
15 other cases during the time period October 2010 to February
16 2011.

17 Can you tell the Court, if you recall, the types of
18 orders in other cases that you were considering and ruling on
19 during that time period?

20 A. In various cases.

21 Q. During that period of time, were all the orders that you
22 worked on as a judge in Lago Agrio as long as the order you
23 issued in the Lago Agrio Chevron case?

24 A. No.

25 Q. If you recall, can you describe either the length or how

DB68CHE5

Zambrano - cross

1 complicated the other orders in those other cases were during
2 that period of time?

3 MR. MASTRO: Objection. Form. Compound. Vague.

4 THE COURT: Overruled.

5 A. They were mainly procedural and the rulings when I had to
6 be the lead or reporting judge, when the hearings would be
7 held.

8 Q. Can you explain to the Court, during the period of time
9 between October 2010 and February 2011, how were you able to do
10 work on your other cases?

11 A. Dr. Alberto Guerra would help me in the other cases by
12 making the drafts of some of those cases, which after I
13 polished them, reviewed them and compared them, or matched it
14 up to the evidence that was on the record for those cases, I
15 would then take or make the final ruling. And once I would
16 print them in the Satje system, I would stamp my signature on
17 them.

18 Q. Dr. Zambrano, is this the first time you have testified in
19 a United States courtroom?

20 A. Yes.

21 Q. Have you ever given a deposition in a United States case
22 before the one you gave last week?

23 A. Never.

24 Q. Can you tell me whether or not you -- strike that.

25 Let me ask you about some of your testimony yesterday

DB68CHE5

Zambrano - cross

1 about your judgment. Before testifying yesterday, can you tell
2 me whether or not you took any steps to review your judgment of
3 February 14, 2011?

4 MR. MASTRO: Objection to form.

5 THE COURT: I will allow it if the questioner wants
6 that question.

7 A. Could you please repeat the question?

8 Q. Yes. Let me change the question.

9 Prior to yesterday, when was the last time you had
10 read your judgment in the Lago Agrio Chevron case of February
11 14, 2011 in its entirety?

12 A. When I issued it.

13 Q. Prior to testifying yesterday, had you taken any steps to
14 memorize any parts of your judgment of February 14, 2011, in
15 preparation for testifying at the trial?

16 A. That's not necessary.

17 MR. BOOTH: Your Honor, I have some books. May I
18 approach?

19 THE COURT: Are you near the end or is this a good
20 time for a break?

21 MR. BOOTH: I am not near the end and I am starting a
22 new point.

23 THE COURT: We will break.

24 (Recess)

25 THE COURT: Continue.

DB68CHE5

Zambrano - cross

1 BY MR. BOOTH:

2 Q. Dr. Zambrano, do you recall referencing an expert named
3 Barros yesterday in your testimony?

4 A. Yes.

5 Q. Will you please explain to the Court who expert Barros was?

6 A. Expert Barros submitted a report because of the
7 contamination in the Chevron case, but he calculated the
8 contamination that had been done by Petroecuador. So when I
9 was asked a question regarding environmental contamination, I
10 referred to expert Barros.

11 THE COURT: Mr. Zambrano, the question was who he was.
12 It may be that Mr. Booth wants to ask you something else.

13 Q. Will you tell us whether expert Barros was an expert in the
14 Lago Agrio Chevron case?

15 THE COURT: He already said that.

16 Q. The report done by expert Barros, was that a report that
17 you considered as the judge of the Lago Agrio Chevron case?

18 A. Yes.

19 Q. Will you explain to the Court the issues or subjects that
20 the Barros expert report pertained to?

21 A. Yes.

22 Q. Will you, please?

23 A. Of course. This report reflected the damage suffered by
24 the Ecuadorian Amazon region due to contamination caused by oil
25 exploration.

DB68CHE5

Zambrano - cross

1 Q. Dr. Zambrano, I put a white notebook in front of you.

2 MR. BOOTH: Your Honor, you should have a copy.

3 THE COURT: I do. Thank you.

4 Q. Can you look at the first document?

5 MR. BOOTH: Your Honor, this should be Plaintiff's
6 Exhibit 400 for us in English and the witness should have
7 Plaintiff's Exhibit 399 in Spanish just for the record.

8 Q. Dr. Zambrano, can you turn to page 134 of this document?

9 First of all, do you recognize what this document is?

10 THE COURT: We know what it is, counselor.

11 MR. BOOTH: I will ask the next question.

12 THE COURT: What is the next question?

13 Q. My next question, will you please turn to page 134?

14 I want to ask you about a phrase you were asked about
15 yesterday during your testimony. The phrase I am referring to
16 is towards the bottom of the page and it is "established in
17 this report is statistical data of highest importance."

18 Will you let me know when you have found that phrase,
19 please?

20 A. Can you please repeat the sentence to me?

21 Q. It should be on the monitor, but it is in English. The
22 phrase is, "Established in this report is statistical data of
23 highest importance."

24 MR. MASTRO: Your Honor, it's not the entire clause.

25 THE COURT: I don't understand you, Mr. Mastro.

DB68CHE5

Zambrano - cross

1 MR. MASTRO: "To delivering this ruling."

2 THE COURT: Fair point.

3 Q. The rest of the sentence I am asking you about says -- the
4 entire phrase that was used yesterday, "Established in this
5 report is statistical data of highest importance to delivering
6 this ruling."

7 Have you found it?

8 A. Yes.

9 Q. I want to ask you, will you please explain to the Court
10 what issue you are discussing in this area on this page of your
11 judgment?

12 MR. MASTRO: Objection. Relevance, your Honor. He is
13 reading the judgment.

14 THE COURT: What exactly is the objection?

15 MR. MASTRO: Can we please approach the side bar?

16 (Continued on next page)

DB68CHE5

Zambrano - cross

1 (At the side bar)

2 THE COURT: Mr. Booth, what is the point?

3 MR. BOOTH: The point is this was the phrase he was
4 asked about yesterday when he was not allowed to look at the
5 actual judgment, and the issue raised and the reason for that
6 display yesterday was that he must not have written it if he
7 can't remember the phrase. Today I am offering him the
8 opportunity --

9 THE COURT: That actually isn't correct, but you can
10 continue your argument.

11 MR. BOOTH: Thank you, your Honor.

12 The way I interpreted what happened yesterday I should
13 say is the suggestion was, because he couldn't remember things,
14 he must not have been the author. Today I would like to give
15 him the opportunity to discuss some of the portions of the
16 sentencia that he was asked about yesterday and let him
17 describe what issues he was considering, what relevance that
18 was to the entire sentencia. I think it's fair for him as the
19 author of the verdict, since that has been put in dispute, to
20 discuss those issues. This is not a document that speaks for
21 itself kind of thing, in my opinion.

22 THE COURT: The question you asked, putting aside the
23 rest of what you said, is, I can read what he wrote here and
24 what he was discussing as well as the next guy. And for him to
25 put a different spin on what he wrote now is not at all

DB68CHE5

Zambrano - cross

1 helpful. But that's not the point of what you're saying I
2 think.

3 You want him, if I understand it, to explain what was
4 going through his head at the time he wrote the report in order
5 to rebut the anticipated argument that because of the direct he
6 gave yesterday it's not credible to believe that he wrote the
7 report. That's a different matter than pointing him to a
8 phrase on a particular page and saying, what were you
9 discussing here?

10 If you, in effect, want to do your own examination of
11 what he can tell us, independent of the report, I will deal
12 with that separately. But if what you want him to do is to
13 interpret what he wrote in the report now, or basically to read
14 it and then spit it back to us in different words, I don't know
15 that we are accomplishing anything.

16 MR. BOOTH: This is the first time I have tried it.
17 He and I have not talked about it. I don't know what he is
18 going to say. What I would like him to do is put it in context
19 of the report. This is just one phrase in one part of the
20 medical part which is many pages. So I would like to ask him
21 to explain to the Court. If the Court finds it is not helpful
22 and the Court asks me to move on, obviously I will. But I
23 believe, in fairness, I should be allowed to ask him to put it
24 in context and explain the issues he was dealing with in this
25 section of his report.

DB68CHE5

Zambrano - cross

1 MR. MASTRO: I think you had absolutely right, and
2 that's why I made a relevance objection. He is pointing him to
3 the document. He is reading the document and then he is going
4 to regurgitate what is in the document. How does that advance
5 us? It doesn't respond to what happened yesterday and it
6 doesn't advance us one whit.

7 THE COURT: I will try to go, at least on a
8 provisional basis, if you wish to do it, examine him with a
9 view to showing he is highly conversant on all these issues,
10 whatever description you want to put to it. But it would not
11 be helpful to me for you to point him to a sentence in the text
12 that he wrote and say, Well, what does that really mean, in
13 effect?

14 MR. BOOTH: Yes, your Honor. That was not my
15 intention. It was to get a broader discussion of the issue.
16 And I would argue it's at least disapprobative of the memory
17 test that he was put through yesterday, at least.

18 MR. MASTRO: To do that with the document in front of
19 him, and he was obviously then reading the page and trying to
20 read around it, it's like leading him entirely to regurgitate
21 the page. If Mr. Booth wants to read that line to him, without
22 him looking at the judgment, and then ask him what he meant by
23 that, that's a different inquiry. But that's not what he is
24 doing. This is a classic leading. He is pointing him to the
25 thing he couldn't get right yesterday with the judgment in

DB68CHE5

Zambrano - cross

1 front of him reading the judgment.

2 THE COURT: Look, I understand both sides' point of
3 view on this. I will say also that it would not be reasonable
4 to expect total recall two years after the fact of everything
5 in a 188-page, single-spaced decision even from Cardozo or
6 Hand. That's clear.

7 I think you're entitled to go at least a little way,
8 Mr. Booth. The question that you asked with the thing in front
9 of him I don't think is at all helpful, because I have no
10 doubt -- well, I take that back, because I assume he may very
11 well be able to skim, or read slowly, a page and then to say,
12 well, OK, I will now put it in different words, and at the end
13 of that process I don't know what we have accomplished. So
14 maybe you ought to try it a different way. I have an open
15 mind. We will see.

16 MR. FRIEDMAN: Can you just give us a minute to
17 confer.

18 THE COURT: Absolutely.

19 (Continued on next page)
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DB68CHE5

Zambrano - cross

1 (In open court)

2 BY MR. BOOTH:

3 Q. Dr. Zambrano, can you briefly describe for the Court -- bad
4 question.

5 Will you please briefly describe for the Court the
6 context of what you're discussing on this page and specifically
7 the phrase that I referred you to?

8 MR. MASTRO: Same objection. Form. Relevance.
9 Leading.

10 THE COURT: We will try it. The record will reflect
11 that the witness has the decision open before him.

12 A. The study that appears here is related to health, and the
13 statistics are regarding the incidence of cancer in the
14 Ecuadorian Amazon region, which is not the same -- it's not the
15 same to live in an area where there is no oil exploration. The
16 incidence of cancer in areas where there is oil exploration is
17 greater.

18 MR. MASTRO: Your Honor, I think the record should
19 reflect he looked down at the document multiple times while he
20 gave that answer.

21 MR. GOMEZ: The defendants dispute the
22 characterization.

23 THE COURT: The judge doesn't.

24 I will let you go a little further, but I am not sure
25 this is productive.

DB68CHE5

Zambrano - cross

1 Q. Will you tell the Court why, if at all, the issue of cancer
2 was an issue you discussed in this judgment?

3 MR. MASTRO: Objection. Relevance.

4 THE COURT: Sustained.

5 Q. Will you close the book for me, Dr. Zambrano?

6 Please tell the Court whether the incidence of cancer
7 was an issue that you considered in drafting this judgment?

8 A. I have detailed that specifically in the judgment.

9 Q. Will you tell me why that was an issue you considered in
10 drafting your judgment?

11 MR. MASTRO: Objection. Relevance.

12 THE COURT: Sustained.

13 MR. BOOTH: Your Honor, may I be heard?

14 THE COURT: We have been up and down this mountain a
15 hundred times, not you and me, but your side of the case and
16 Chevron before you.

17 MR. BOOTH: May I say something about that? Not the
18 issue you're raising, but why I am asking the question. It has
19 to do with the side bar, the issue at the side bar. I am
20 asking him to close the book. I am asking him for the context.

21 THE COURT: The point is that his subjective
22 motivation as to why he discussed it has nothing to do with
23 this.

24 MR. BOOTH: As was discussed at side bar, this was the
25 phrase they chose yesterday, I didn't choose it, but it is the

DB68CHE5

Zambrano - cross

1 phrase they chose. Now I am asking him to speak to the context
2 of it with the book closed.

3 THE COURT: I understood fully. I sustained the
4 objection to that question.

5 Q. Can you turn, Dr. Zambrano, to page 88 of the sentencia?

6 Would you look at the top of the page, after the
7 number 4, the phrase, "Theory of sufficient causation." "This
8 theory with which we agree is the one toward which the majority
9 of writers on legal doctrine," and then it goes on.

10 Dr. Zambrano, would you look briefly at that page, and
11 I would ask you to describe for the Court the causation issues,
12 if any, that you were considering in writing your sentencia.

13 MR. MASTRO: Objection. Form. Relevance. Leading.
14 The witness is reading.

15 THE COURT: The witness is looking down at the page.
16 Whether he is reading or not, I don't know.

17 MR. BOOTH: I asked the witness to read.

18 A. You told me to look at this page.

19 Q. I did, yes.

20 A. Thank you.

21 THE COURT: You may answer the question.

22 A. What is the question?

23 Q. The question is, can you explain for the Court -- bad
24 question.

25 Will you please explain to the Court the context of

DB68CHE5

Zambrano - cross

1 the causation issues, if any, that you were considering while
2 drafting this sentencia?

3 MR. MASTRO: Different question. Same objection.
4 Form. Relevance.

5 THE COURT: Sustained as to form. We are not going to
6 have testimony about the context.

7 Q. Please describe for the Court what causation issues, if
8 any, you considered when drafting this sentencia?

9 MR. MASTRO: Same objection.

10 THE COURT: Overruled at least for the moment.

11 Q. Doctor, would you close the book while you do this?

12 A. Would you please repeat the question?

13 Q. Will you please explain to the Court what causation issues,
14 if any, you considered when drafting your sentencia?

15 MR. MASTRO: Same objection, your Honor.

16 THE COURT: I will hear it.

17 A. The theory of the causality, mainly here in the United
18 States, in England and in France, deals with the difference
19 between causality -- causation, legal causation and scientific
20 causation, and the judge has discretional authority, the judge
21 has the discretion, if I am properly recalling this.

22 THE COURT: The judge has discretion to do what?

23 THE WITNESS: Of looking into the greater harm or
24 damage, but I cannot recall exactly. But in any event, in the
25 judgment I did develop that topic with the research that was

DB68CHE5

Zambrano - cross

1 done, and the judge is exactly an investigator.

2 THE COURT: Sir, you said the judge has discretion of
3 looking into the greater harm or damage. Would you agree with
4 me that the use of the word greater involves a comparison of
5 the amount of damage on one alternative with the amount of
6 damage on one or more other alternatives? Do you agree with
7 that?

8 THE WITNESS: Yes.

9 THE COURT: And when you said that the judge has the
10 discretion of looking into the greater harm or damage, what
11 were the various alternatives that you had in mind?

12 THE WITNESS: That I did not need to establish whether
13 this or that damage had been done as to an amount, but rather
14 that it was whether or not there was contamination.

15 THE COURT: And that was true in your understanding
16 and consideration, regardless of whether the contamination
17 injured anybody? That was your view?

18 THE WITNESS: Yes. That was exactly the basis for
19 establishing whether or not there was contamination and not the
20 amount of the same.

21 THE COURT: And one final question from me, at least
22 for now. And that you say through your research you determined
23 was the law here in the United States, is that true?

24 THE WITNESS: There are theories, and I took those
25 principles, not only from the United States, but also France

DB68CHE5

Zambrano - cross

1 and England.

2 THE COURT: Are you saying that you concluded that
3 that theory was the one applied, or among the ones applied, in
4 the United States, possibly among other countries?

5 THE WITNESS: It is the principle that is taken.

6 THE COURT: In the United States, is that correct?

7 THE WITNESS: Yes.

8 THE COURT: And that principle is taken, according to
9 your analysis, by courts in the United States, is that so?

10 THE WITNESS: Well, the research that I did was about
11 the principles that there were in the United States in the
12 doctrine. I have only taken the principle. I am not saying
13 that is what is applied here. This is a principle that has
14 been developed.

15 THE COURT: By courts or by others?

16 THE WITNESS: Could you please clarify that?

17 THE COURT: Yes. You said, "This is a principle that
18 has been developed." By whom in the United States has that
19 principle, in your estimation, been developed?

20 THE WITNESS: I do not remember.

21 THE COURT: Go ahead, Mr. Booth.

22 MR. BOOTH: Thank you, your Honor.

23 BY MR. BOOTH:

24 Q. Dr. Zambrano, I want to now turn to your first term as
25 judge on the Lago Agrio Chevron case.

DB68CHE5

Zambrano - cross

1 Will you explain for the Court what, if any, steps you
2 took during your first term to prepare yourself to write the
3 judgment in that case?

4 A. I was the alternate judge, alternate president of the
5 court. The alternate president is the one who replaces the
6 sitting president at any time when the sitting president cannot
7 fulfill his duties. For this reason, when I came to hear the
8 Chevron case, I made notes which were going to be useful to me,
9 in case at a certain point I could come to rule on the matter,
10 the case. Because as the second sitting judge, during the
11 following term, it was possible that I could be appointed
12 president of the court, and for this reason, I did not discard
13 the various notes which I was making as I was reviewing the
14 record.

15 Q. Now, I want to ask you about your second term as presiding
16 judge over the Lago Agrio --

17 THE COURT: Did you want an answer to the question you
18 asked, Mr. Booth?

19 MR. BOOTH: He not only answered the one I asked, but
20 the next two or three.

21 THE COURT: All right if you're fine with it.

22 MR. BOOTH: Having heard you say that, maybe I will
23 ask another question.

24 Q. Specifically, Dr. Zambrano, other than making notes that
25 you just indicated, did you take any other steps to prepare

DB68CHE5

Zambrano - cross

1 yourself --

2 THE COURT: Excuse me. I think you ought to go over
3 and oblige Mr. Mastro and look over his shoulder again and see
4 what the witness actually said.

5 MR. BOOTH: I will rephrase it.

6 Q. Dr. Zambrano, will you please tell the Court what specific
7 steps, if any, you took during your first term as judge of the
8 Lago Agrio Chevron case to prepare yourself for writing the
9 judgment in that?

10 A. Make notes, research, in any way possible, all the issues
11 that were in dispute.

12 Q. Now I want to go to your second term as presiding judge of
13 the Lago Agrio Chevron case, and I want to focus on the period
14 of time of October 2010 to February 2011.

15 Please describe for the Court the steps, if any, that
16 you went through to prepare yourself to write and eventually
17 then to write the sentencia in that case.

18 A. Could you please explain the question to me?

19 Q. I will try it again.

20 During the period of time between September of 2010
21 and February 2011, please describe for the Court what, if any,
22 steps you took to prepare to write the sentencia in the Chevron
23 Lago Agrio case.

24 A. From September 2010?

25 Q. October 2010. Well, let's do September 2010.

DB68CHE5

Zambrano - cross

1 A. September of 2010 to 2011?

2 Q. To February 2011.

3 A. There was a second time I heard this case, and by the time
4 I heard it again, all the evidentiary period was already
5 concluded.

6 Q. Let me ask you, please explain to the Court what the
7 evidentiary period, what does that term mean under Ecuadorian
8 law?

9 A. For summary oral trials in Ecuador, there are six days in
10 which evidence must be submitted. In this case, the evidence
11 that the parties had requested had already been submitted,
12 including the previous judge had already ruled on the essential
13 errors. All that was left to me was to hear on various
14 motions, repetitive ones, that one of the parties mainly was
15 submitting, insisting on the same issue, to carry out other
16 procedures that were no longer necessary.

17 Q. So tell the Court, please, beginning in the September 2010
18 time frame what, if anything, specifically you did as judge of
19 the Lago Agrio Chevron case.

20 A. Polishing the judgment very soon and in a final way would
21 be included in the definitive document.

22 (Continued on next page)

23

24

25

DB6LCHE6

Zambrano - cross

1 Q. So I want to focus on the efforts you made towards drafting
2 the final document of the sentencia.

3 Will you explain to the Court -- I'd like you to do it
4 step by step -- the steps you went through during that period
5 towards writing the final judgment in the Lago Agrio Chevron
6 case, please?

7 MR. MASTRO: Objection, asked and answered, subsumed
8 in the prior question.

9 THE COURT: I'm sorry, I can't hear you.

10 MR. MASTRO: Objection, asked and answered, your
11 Honor, subsumed within the prior question.

12 THE COURT: Overruled.

13 A. I want you to be specific as to what you mean by steps,
14 what do you mean by steps?

15 Q. The process you went through, the things you did, if any,
16 during that period of time to prepare to write the judgment in
17 the Lago Agrio Chevron case.

18 A. Do research, to continue researching.

19 Q. And can you explain what type of researching or
20 investigation you did during that period of time?

21 That was a bad question.

22 Will you please explain what type of investigation or
23 research you did during that time period.

24 A. Well, I carried out research constantly during all the
25 periods, but I don't recall exactly at that time.

DB6LCHE6

Zambrano - cross

1 Q. During that period of time --

2 A. Strike that -- at that time frame.

3 Q. During that period of time between September 2010 and
4 February 2011, will you tell the Court whether you reviewed any
5 part of the official record of the Lago Agrio Chevron case?

6 A. I always had to read the case because I had to rule on the
7 motions filed by the parties.

8 Q. Now, during your second term, the second term between
9 October 2010 and February 2011, Ms. Calva worked with you -- I
10 think you testified to that already -- is that right?

11 A. Yes.

12 Q. Did Ms. Calva assist you in working on any cases other than
13 the Lago Agrio Chevron case?

14 A. I don't recall.

15 Q. Now, in terms of the official record of the case, the
16 Chevron case, Lago Agrio case, can you -- will you explain to
17 the Court the process if any you used in selecting the portions
18 of the record you reviewed?

19 MR. MASTRO: Objection, form, asked and answered,
20 leading, assumes facts not in evidence.

21 MR. BOOTH: I'll try to ask a better question.

22 Q. Dr. Zambrano, will you tell the Court what types of
23 documents would have been included, what type of documents were
24 included in the official record of the Lago Agrio Chevron case
25 in Ecuador?

DB6LCHE6

Zambrano - cross

1 A. Well, this case became exceedingly voluminous because
2 specifically those who were defending the oil company would
3 constantly file repetitive motions, would file copies of copies
4 of copies, and that is practically unnecessary, but the motions
5 had to be ruled on. It contained way too many copies of the
6 copies of the copies. Surely, it must have been the strategy
7 by that party.

8 That's why the main part was read, the evidence,
9 jointly, the pleadings, the expert reports. That was the basis
10 of the judgment. That was -- that is what was decided on.

11 MR. MASTRO: Your Honor, I move to strike everything
12 prior to that's why the main part was read, the evidence, etc.
13 Everything in the beginning of that answer was nonresponsive
14 and should be stricken.

15 THE COURT: Granted.

16 Q. Did the official record of the Lago Agrio Chevron case
17 contain motions?

18 MR. MASTRO: Asked and answered.

19 THE COURT: Overruled.

20 A. Yes.

21 Q. Did the official record of the Lago Agrio Chevron case
22 include orders in that case?

23 A. Yes.

24 Q. Did the official record of the Lago Agrio Chevron case
25 include pleadings in that case?

DB6LCHE6

Zambrano - cross

1 A. Yes.

2 Q. Did that official record of the Lago Agrio Chevron case
3 include evidence for that case?

4 A. Yes.

5 Q. And will you please describe for the Court the type of
6 evidence that would -- that was in the official record of the
7 Lago Agrio Chevron case?

8 MR. MASTRO: Objection, form. The record speaks for
9 itself.

10 THE COURT: Well, the entire record is not in
11 evidence.

12 MR. MASTRO: It's the type of evidence, your Honor.
13 That's why I objected to form, that would.

14 THE COURT: Sustained as to form.

15 Q. Please describe for the Court, when you say there was
16 evidence in the record of the Lago Agrio Chevron case, what do
17 you mean by the term evidence?

18 MR. MASTRO: Your Honor, I have an objection and I'd
19 like to approach the side bar, please.

20 THE COURT: All right.

21 (At the side bar)

22 MR. MASTRO: Your Honor, this is obviously an attempt
23 to get the witness to say, oh, there's evidence in the record
24 on which I relied, evidence of this and that and the other all
25 about the merits of the underlying case. That's exactly what's

DB6LCHE6

Zambrano - cross

1 not supposed to be a part of this trial. And they're trying to
2 get him through the back door to describe, you know, what he's
3 going to subjectively say was evidence that supported his
4 judgment and that's exactly what this trial is not supposed to
5 be about and certainly not from this witness, given the
6 testimony he's given here, to be able to start giving
7 subjective views on the evidence.

8 THE COURT: Look, right now the only question is more
9 or less to the effect of what kinds of evidence were there. Am
10 I correct in that?

11 MR. MASTRO: You are, but I think he's about to give
12 another one of those long-winded speeches where he starts to
13 describe all sorts of things.

14 THE COURT: If we get it, I'm perfectly capable of
15 striking it if it's improper.

16 MR. BOOTH: It's not my intention to do that. I'm
17 just trying to establish what types of things would be in the
18 record. I'm not going to ask him --

19 THE COURT: I don't for the life of me understand why
20 we're doing this through a witness at all because you both have
21 the record and you both know what's in it and if you're really
22 and genuinely interested in getting in an anodyne description
23 of the types of evidence, I'm sure it could be stipulated in
24 ten minutes.

25 But I'll let him answer this question.

DB6LCHE6

Zambrano - cross

1 MR. BOOTH: Thank you, Judge.

2 (In open court)

3 THE COURT: Just for everyone's guidance, I'm going to
4 stop with the witness at 4:30. I have to take a criminal
5 matter briefly, and then counsel remain because we're going to
6 deal in all likelihood with one or two other matters that don't
7 involve the witness.

8 MR. BOOTH: Yes, your Honor.

9 I don't remember if there was a question pending.

10 THE COURT: I hope there was because we have all
11 discussion of whether the objection to it ought to be
12 sustained.

13 MR. BOOTH: I just don't remember what the question
14 was.

15 THE COURT: That's another matter.

16 MR. BOOTH: Yes, your Honor. If there is one pending,
17 can I have it.

18 THE COURT: You sure can. I'll do it.

19 And will you please describe for the Court the type of
20 evidence that was in the official record of the Lago Agrio
21 Chevron case.

22 THE WITNESS: Documentary evidence, testimony, and
23 material evidence, physical evidence.

24 BY MR. BOOTH:

25 Q. Did the Lago Agrio Chevron official court record include

DB6LCHE6

Zambrano - cross

1 expert reports?

2 A. Yes.

3 Q. In the Lago Agrio Chevron official court record, please
4 tell the Court whether there were, in any instance, more than
5 one copy of the same document, if you know.

6 MR. MASTRO: Objection, relevance.

7 THE COURT: Look, I know where he's going. He's been
8 there before. You were there. It's in the deposition. But
9 why not? It's only time.

10 MR. MASTRO: Just trying --

11 THE COURT: Our life spans are all infinite.

12 MR. MASTRO: I understand, your Honor. But your Honor
13 actually had a ruling on this subject that it's an excluded
14 subject.

15 THE COURT: I'm sorry?

16 MR. MASTRO: I think your Honor actually had a ruling
17 on this subject about excessive motions being excluded as an
18 issue in this case.

19 THE COURT: That's not where we are I think, right,
20 Mr. Booth?

21 MR. BOOTH: Right, your Honor. It's not my intention.

22 THE COURT: Where I think we were is that about this
23 time last night -- so it's not surprising that perhaps it
24 slipped people's minds; it almost slipped mine -- there was an
25 attempt by Mr. Mastro to offer a snippet of testimony from the

DB6LCHE6

Zambrano - cross

1 witness's deposition which, as memory serves, is at page 105 of
2 the deposition.

3 MR. MASTRO: Yes, your Honor.

4 THE COURT: And Mr. Booth objected, essentially, that
5 that was out of context. And I said I would take the
6 deposition home and read it and I would rule on it. And I did
7 and I will, if anyone cares anymore.

8 I believe the passage in full starts at page 103,
9 line 5, and it went on to 108, line 20.

10 Am I right, Mr. Booth?

11 MR. BOOTH: That sounds exactly right, your Honor.

12 THE COURT: Okay. So why instead of beating this all
13 to death for a second or third time doesn't one or both of you
14 offer that portion of the deposition and we'll simply take it
15 and that will be the testimony on the subject.

16 MR. MASTRO: Happy to do it, your Honor.

17 MR. BOOTH: Yes, your Honor. Thank you.

18 THE COURT: Done. The pages just indicated are
19 received for that purpose.

20 MR. MASTRO: Thank you, your Honor.

21 THE COURT: Let's go on.

22 BY MR. BOOTH:

23 Q. Judge Zambrano, just as a last thing for us today, would
24 you open the book that you have and it should have at the end
25 of the book should be the clarification order in this case.

DB6LCHE6

Zambrano - cross

1 There's a second tab. It should be the second tab.

2 THE COURT: This would be Plaintiff's Exhibit 429, the
3 English version.

4 MR. BOOTH: Yes, your Honor.

5 Q. Plaintiff's Exhibit 429, the English version. And, I'm
6 sorry, I don't know the Spanish version number if we have one.

7 MS. FRIEDMAN: I think the Spanish, your Honor --

8 THE COURT: I think it's attached to the English
9 version, is it not?

10 MR. BOOTH: Yes, your Honor. That is correct. Thank
11 you.

12 Q. Dr. Zambrano, do you have the clarification in front of you
13 in Spanish?

14 A. Yes.

15 Q. Please explain to the Court the procedure, the procedural
16 aspects of you having signed -- strike all that.

17 Please explain to the Court what the clarification
18 order is in this case.

19 THE COURT: Are you asking him the substance or are
20 you asking him something else?

21 MR. BOOTH: I was trying to ask him something else.
22 Bad question, your Honor.

23 Q. Dr. Zambrano, please describe for the Court why you issued
24 the clarification order in this case.

25 MR. MASTRO: Objection.

DB6LCHE6

Zambrano - cross

1 THE COURT: Ground?

2 MR. MASTRO: Relevance, subjective reasoning, and why
3 he issued an order.

4 THE COURT: Sustained at least in that form.

5 Q. Dr. Zambrano --

6 THE COURT: Look, Mr. Booth, what you're getting at is
7 a question of what the legal procedure is.

8 MR. BOOTH: Yes.

9 THE COURT: Work it out with Mr. Mastro. I mean
10 you've got a whole council of lawyers down in Ecuador and he
11 seems to have experts, access to experts on the moon, among
12 other places. Work it out.

13 MR. BOOTH: Yes, your Honor.

14 Q. Dr. Zambrano, this clarification order, who was the author
15 of this order?

16 A. I was.

17 Q. Who typed the words in this order?

18 A. Ms. Calva.

19 Q. Did you type any of the words that are in this order
20 yourself?

21 A. Yes.

22 Q. Please describe for the Court the process you went through
23 in drafting this clarification order.

24 A. The motions for clarification and for the clarification and
25 supplemental order were heard, were submitted by both parties.

DB6LCHE6

Zambrano - cross

1 Q. And then the actual process of typing out this order,
2 please describe how you did that.

3 A. I referred to the record in order to be able to answer,
4 reply, the parties' requests. I dictated to Ms. Calva. I
5 would dictate to Ms. Calva to the parts up until she left for
6 the day and that's how we continued doing it until I issued it.

7 Q. Did anyone else author any part of the clarification order?

8 A. Only I was.

9 Q. Other than Ms. Calva, did anyone else help you draft the
10 clarification order?

11 A. I would dictate only to her when it was necessary.

12 Q. All right. Just so I have an answer to the question, did
13 anyone else assist you in any way with the drafting of the
14 clarification order other than Ms. Calva who typed for you?

15 A. No.

16 MR. BOOTH: Your Honor, I'm about to go to a different
17 topic.

18 THE COURT: All right. We'll break with the witness
19 here. We'll take a very short recess. We'll take the Stelman
20 matter which shouldn't be very lengthy. I'm told the AUSA is
21 not here yet. We'll see. This may be a very short recess.

22 Mr. Zambrano, we'll see you 9:30 tomorrow morning.

23 MR. MASTRO: Thank you, your Honor.

24 (Recess)

25 THE COURT: Mr. Booth, are you leaving us or just

DB6LCHE6b

1 cold?

2 MR. BOOTH: I'm standing back here just in case.

3 THE COURT: I'm not going to ask just in case what.

4 Look, what I wanted to deal with is Chevron's motion
5 to preclude or limit certain defense witnesses at trial because
6 the response I got from defense is we haven't got time to
7 respond in writing, we'll do it orally.

8 So here's your chance, folks.

9 Let's start with Humberto Piaguaje.

10 MS. FRIEDMAN: Can I pull out my motion, your Honor?

11 THE COURT: Oh, yes. Absolutely. And you can tell us
12 the context of the phrase -- I'm teasing you again. I
13 shouldn't do that.

14 MS. FRIEDMAN: What was the phrase?

15 THE COURT: I was referring to the context of the
16 phrase that Mr. Mastro examined Mr. Zambrano about and the
17 cross on that. After the last criminal matter one can have a
18 little humor, I hope.

19 We ready on this?

20 MR. GOMEZ: In all honesty, your Honor, I have not had
21 a chance to read the papers. But I assume that the argument
22 being made by Chevron is that Mr. Humberto Piaguaje's proposed
23 testimony isn't relevant.

24 Our position is that there's a narrative being told
25 here that Mr. Donziger was in control of a great many decisions

DB6LCHE6b

1 in the history of this case. Mr. Humberto Piaguaje has been
2 involved for quite some time going back to 2003. The nature of
3 his involvement has been in the leadership of the organization
4 or group that represents the plaintiffs.

5 (Continued on next page)

DB68CHE7

1 MR. GOMEZ: It started as a grass-roots movement that
2 has evolved over time. It has participated in very important
3 decisions in the history of the case, some of which have been
4 attributed to Mr. Donziger, namely, the termination of
5 attorneys or hiring of attorneys working on the case. It is
6 that organization that appears on the retainer agreement, and
7 we believe Mr. Humberto's testimony would be relevant to
8 disprove the idea that Mr. Donziger is in control of all of
9 these decisions, that in fact there is an existing client, not
10 a list of forged names, and we would offer him up for these
11 purposes.

12 THE COURT: Mr. Mastro.

13 MR. MASTRO: Your Honor, he is not one of the named
14 clients. The other Mr. Piaguafe, who is a defendant in this
15 case, and also is part of the assembly, to the extent they
16 wanted to ask questions along those lines, this person has
17 nothing relevant to add to this case. He is being called here
18 to talk about conditions in Ecuador and things that occurred
19 there, and to the extent he has something to say about the
20 assembly, which largely has been denied since we have not
21 received information in terms of Ecuadorian documents, except
22 some that they put on their exhibit list, they can call
23 Mr. Piaguafe, the actual defendant, who is part of the
24 assembly. So there is no reason why this person should be
25 testifying. There is nothing relevant he has to say at this

DB68CHE7

1 trial.

2 THE COURT: What exactly, Mr. Gomez or Mr. Friedman,
3 is the offer of proof?

4 MR. GOMEZ: He would say, your Honor, and the reason
5 why it doesn't overlap with Mr. Javier Piaguaje is his
6 involvement has been for a longer period of time and at a
7 higher leadership level.

8 THE COURT: Please answer my question.

9 MR. GOMEZ: He would say that it is the union of
10 afectados, formerly known as the assembly, that made the
11 decisions of which attorneys to hire and fire, and they were
12 not made by Mr. Donziger, that he was not in control of the
13 matter. Indeed, when the time came, it was the same union who
14 curtailed and controlled the role of Mr. Donziger. That would
15 be the offer of proof. He is not at the top of the hierarchy.
16 The clients have been in control of the case through the
17 assembly and the union.

18 THE COURT: Respond to that.

19 MR. MASTRO: We saw the other Mr. Piaguaje here
20 talking about those assembly meetings when we had the sanctions
21 hearing. So the notion that Humberto Piaguaje has to be here
22 to talk about those things, because he is also part of the
23 assembly and they prefer him to come here to testify, this is
24 not someone who offers anything unique to this case, and, your
25 Honor, I believe that it's pretty clear that what is really

DB68CHE7

1 intended here --

2 THE COURT: They are trying to retry the sanctions
3 motion.

4 MR. MASTRO: Correct your Honor.

5 MR. FRIEDMAN: If I could speak to that. I don't
6 think what we are talking about is retrying the sanctions
7 motion, but pushing back against the allegations we have heard
8 in the trial about Mr. Donziger being the mastermind to all the
9 events that you have heard about. That's the point if I
10 understood Mr. Gomez.

11 THE COURT: Look, I am enormously skeptical that this
12 man has anything material or not cumulative to say, but I will
13 let you call him and hold you to the offer of proof that you
14 just made. That's it.

15 Now, is there any need to depose him in light of the
16 fact that he was not identified in the 26(a)(1) disclosures?

17 MR. MASTRO: That is exactly what I was just about to
18 say, your Honor. We would request the opportunity to depose
19 him under those circumstances.

20 THE COURT: Any reason why I shouldn't permit that?

21 MR. FRIEDMAN: Can we have just a second, your Honor?

22 MR. GOMEZ: Your Honor, to be frank, we have had one
23 deposition already. We are facing two more in the midst of
24 trial. The thought of another is a very complicated thing to
25 manage. I would like 24 hours to consult with my clients and

DB68CHE7

1 to consult with my co-counsel and figure out if there is a way
2 for Mr. Piaguaje, Javier Piaguaje, the defendant, to cover as
3 much as is necessary, and then to report to the Court on a
4 decision perhaps to withdraw Mr. Piaguaje, Humberto Piaguaje,
5 strictly because of the logistical complication of having to
6 schedule yet another deposition, which, in fairness, I assume
7 the plaintiffs are entitled to.

8 THE COURT: I appreciate the frankness on that point.
9 So the ruling on this one will be that if you want to call him,
10 you may, provided that his testimony will be limited to the
11 offer of proof you just made, and that he will have given a
12 deposition previously, and we will hear from you tomorrow about
13 whether you elect to drop him or go forward. If you're going
14 to go forward, there will have to be a deposition.

15 Now we get to Escobar. I gather the argument
16 essentially is that he is being called only to give hearsay
17 about the alleged Borja incident.

18 MR. FRIEDMAN: If I could interrupt. I gave Mr.
19 Mastro notice this afternoon that we have been unable to obtain
20 his attendance. So he is dropping off our list.

21 THE COURT: Thank you. That solves that problem.

22 Donald Moncayo. It would be helpful, Mr. Mastro, if
23 you summarized for your brethren at the bar what the argument
24 is.

25 MR. MASTRO: Your Honor, briefly, Mr. Moncayo is a

DB68CHE7

1 Selva Viva employee, Selva Viva being a defaulting defendant in
2 this case. Mr. Moncayo's limited testimony is about supposedly
3 seeing at the courthouse occasions through an open door of a
4 Chevron attorney having gone into a judge's chambers and having
5 some conversation and with the door open. And he describes at
6 least one other meeting where --

7 THE COURT: What is unbelievable about it inherently,
8 that he couldn't hear it through an open door, or if something
9 was going on, the door would have been closed? I don't get it.

10 MR. MASTRO: The notion of that being relevant
11 testimony on unclean hands, that there were occasions when he
12 saw really an incidental interaction, a door open in one
13 instance. He described a situation where the Lago Agrio
14 plaintiffs' representatives were then invited into the room.
15 It is not something that can possibly rise to the level of
16 unclean hands evidence.

17 They also offer him on merits issues, like the toxic
18 tours that he gives. So it's clear that this a backdoor way to
19 have someone come in and talk about conditions on the ground in
20 Ecuador under the guise of supposed unclean hands evidence that
21 couldn't possibly rise to the level of any kind of improper
22 contact that this person would have witnessed or seen. He is
23 not able to actually describe any substantive interaction that
24 a Chevron person had with the judge for that to be unclean
25 hands evidence.

DB68CHE7

1 THE COURT: Let me hear from the other side.

2 MS. LITTLEPAGE: Yes, Judge. I think we have provided
3 a copy of Mr. Moncayo's witness statement.

4 THE COURT: I have it in front of me.

5 MS. LITTLEPAGE: I don't want to repeat what the Court
6 probably already knows. He lays out in his witness statement
7 the things that he testified to in-depth at his deposition.

8 THE COURT: A deposition is a different case.

9 MR. MASTRO: Count 9, in Ecuador.

10 MS. LITTLEPAGE: I don't know that I can add anything
11 other than his witness statement because he doesn't speak
12 English and I don't speak Spanish.

13 THE COURT: The witness statement speaks of three or
14 four incidents, perhaps more depending on what paragraph 13
15 means, in which he says something about alleged conversations
16 between Chevron counsel and one or another judge. It's not
17 even in each case clear that the judge in question was the
18 judge on the case, which seems to be sort of a relevant fact.
19 I am certainly willing to hear what he has to say on that.
20 There is an unclean hands argument, and it may well be, Mr.
21 Mastro, that he has got no personal knowledge of anything that
22 would fall into the category of an improper ex parte contact.
23 He may on the other hand have something. So that much I am
24 going to hear.

25 Then he goes on about conditions in the Oriente,

DB68CHE7

1 pollution and illnesses that affect people that had contact
2 with oil residues. I take it from what you said, Ms.
3 Littlepage, you're not pressing any of that, is that right?

4 MS. LITTLEPAGE: Well, Judge, as you know, we take the
5 position that the contamination issues and the pollution should
6 be in the case, and I understand the Court does not agree with
7 me. I asked Mr. Moncayo through an interpreter to write his
8 personal knowledge of the issues. He did. I accept if the
9 Court strikes that portion of his witness statement, but
10 obviously we wanted it in his witness statement so the
11 appellate record would be clear as to what he would have said
12 if he was allowed to testify fully. If the Court doesn't
13 accept that testimony, I understand.

14 THE COURT: I am not accepting it. And, Mr. Mastro,
15 you and Ms. Littlepage can work out what gets stricken, and he
16 will be called on the limited basis indicated. That takes care
17 of him.

18 MR. MASTRO: Thank you, your Honor.

19 THE COURT: Is this one where you had asked for a
20 deposition or not? I think not, right?

21 MR. MASTRO: We had not asked for a deposition, your
22 Honor. I just wanted to point out, in case it wasn't clear, he
23 doesn't claim he heard or knows the substance of any of the
24 three or four encounters that he says he witnessed.

25 THE COURT: Look, I am going to give them an

DB68CHE7

1 opportunity, which they are entitled to in my view, to try to
2 prove what they say.

3 Now, I understand that the statement is, shall we say,
4 a little bit delphic in this area, but who knows. We will see.

5 MR. MASTRO: Understood, your Honor.

6 THE COURT: Now, Alejandro Ponce Villacis. I have no
7 Spanish so you will forgive my pronunciation.

8 MS. LITTLEPAGE: We are going to get Mr. Ponce's.
9 Hopefully, it's on my computer when I get home tonight. We are
10 going to be serving his actual witness statement tonight. I
11 will be honest, I have not seen his complete witness statement.
12 I have spoken to him. I don't believe anything in his witness
13 statement is going to address the issues raised in the motion
14 about the sting operation, but I haven't seen the statement.

15 My understanding of his statement is it's going to be
16 directed to some of the issues that were raised at the
17 beginning of the trial, on some of the issues that came about
18 in the underlying trial. The HAVOC inspection labs, the
19 stopping of the judicial inspections. He was the lawyer on the
20 case at that point and deals factually with some of those
21 issues. The issues raised in their motion I don't believe are
22 part of his witness statement, but I haven't seen it. But we
23 will all see it tonight and probably address it better
24 tomorrow.

25 THE COURT: We will defer it.

DB68CHE7

1 Then we have Ms. Soltani.

2 MS. LITTLEPAGE: She will not be able to attend. She
3 has to go to New Zealand or Australia, somewhere far.

4 THE COURT: Juan Pablo Alban.

5 MR. FRIEDMAN: We are in a similar situation. We are
6 hoping that when we get back today we will have a witness
7 statement from him.

8 THE COURT: So we will defer on that.

9 MR. MASTRO: He is being called as an Ecuadorian law
10 expert.

11 THE COURT: Is that right?

12 MR. FRIEDMAN: That's not exclusively. Again, I
13 haven't seen his statement either, but he is responding to
14 other things that I can't say in open court. I don't know if I
15 can say it. Can we have just a quick side bar?

16 THE COURT: We will see the statement.

17 What is the story about Berlinger?

18 MR. FRIEDMAN: I also informed Mr. Mastro he is not
19 coming.

20 THE COURT: That takes care of that.

21 Now, how long do we expect to be tomorrow?

22 MR. MASTRO: Your Honor, we have two witnesses who
23 have been in town and really need to get on the stand tomorrow.
24 That's Mr. Rayner and Ms. Zygocki. And I can tell you, based
25 on what happened here this afternoon, my additional examination

DB68CHE7

1 would be minimal at best.

2 THE COURT: Your additional examination of?

3 MR. MASTRO: Of Mr. Zambrano.

4 THE COURT: How long are we going to be with Mr.
5 Zambrano with the defendants?

6 MR. GOMEZ: Mr. Booth and I should be finished by the
7 end of the morning, perhaps sooner.

8 MR. MASTRO: Can we have an estimate on the two
9 cross-examinations for Rayner and Zygocki?

10 MR. FRIEDMAN: Zygocki is a half hour.

11 MR. MASTRO: How about Rayner?

12 MR. BOOTH: Half hour or less, but I could be wrong
13 because I haven't fully looked at it.

14 THE COURT: Give me the current best estimate of what
15 the defense case looks like. Who are the witnesses and how
16 long is it going to take?

17 MR. FRIEDMAN: Can I have just a second, your Honor?

18 THE COURT: I am assuming Ms. Hinton is going to be a
19 lot shorter than was initially thought.

20 MR. FRIEDMAN: I can't speak to Ms. Hinton, your
21 Honor. Ms. Littlepage can I hope.

22 MS. LITTLEPAGE: Judge, obviously, it's depending on
23 the cross-examination. Ms. Hinton, the main focus of her
24 testimony is on Mr. Donziger's state of mind. Her testimony is
25 not offered for the truth of the press releases or what she is

DB68CHE7

1 doing, but she is in discussions with Mr. Donziger. They are
2 discussing how to respond to different issues, and she was
3 there at the time and can talk about his understanding,
4 knowledge, instructions to her, and therefore it is some
5 insight into his state of mind at the time.

6 THE COURT: Who are the witnesses overall on the
7 defense case?

8 MR. FRIEDMAN: We have Hinton, Ponce, Moncayo, Alban,
9 Mr. Donziger, Calva, the computer person. Having said all of
10 those people, your Honor -- then Mr. Gomez's clients. Having
11 said all of those --

12 THE COURT: One of them or both of them?

13 MR. GOMEZ: Javier has a visa. Hugo does not. We
14 hope to have information on whether he received an appointment
15 to get his visa, but right now he does not have one.

16 THE COURT: Of course, he has known the trial date for
17 a year.

18 So one week, four days?

19 MR. FRIEDMAN: The two unknowns, your Honor, are --

20 THE COURT: Mr. Donziger.

21 MR. FRIEDMAN: That would be one. The other big
22 unknown is many of our Ecuadorian witnesses, like Ms. Calva, I
23 think Mr. Moncayo, we don't have any certainty they are going
24 to get visas and be here on time. The same with Tarco, the
25 computer person. I am telling you our largest case at this

DB68CHE7

1 point.

2 THE COURT: I appreciate that. That's really what I
3 am looking for.

4 MR. FRIEDMAN: The other issue is the Doe 3 issue. We
5 gave the Court a pleading today that has not been formally
6 filed because we didn't have a computer disk. We will file it
7 tomorrow.

8 THE COURT: OK. How long is Mr. Donziger going to be
9 on direct?

10 MR. FRIEDMAN: I would say a day.

11 THE COURT: Cross?

12 MR. MASTRO: Your Honor, I am surprised to hear that a
13 supplemental direct would last a day for Mr. Donziger to talk
14 about his state of mind or his intent.

15 THE COURT: I intend to give him a certain amount of
16 latitude. His credibility is pretty important in this case, or
17 at least so it looks at the moment.

18 MR. MASTRO: Understood, your Honor. I am hopeful to
19 be as efficient as possible. If he is really going to be on
20 the stand a day, I don't intend to go more than a day. I
21 hopefully go less than a day, but I am going to have to
22 question him about some of the things that he is undoubtedly
23 going to say while he is on the stand.

24 I needed to add, so your Honor knows all the potential
25 witnesses, after the two that I named on our side who have to

DB68CHE7

1 testify tomorrow, and it sounds like they will get on, we also
2 have Mr. Anson and Alvarez Grau who is our last witness. They
3 should be quick.

4 Then, finally, one witness out of turn for next week
5 on the 14th, Josh Lipton from Stratus.

6 THE COURT: What is his name?

7 MR. MASTRO: Josh Lipton. He is the head of Stratus.

8 Finally, I just wanted to ask the defense if they
9 could let us know the status of Mr. Seidel as a witness, who
10 used to be at Burford.

11 MR. FRIEDMAN: He is not going to be coming.

12 What I told Mr. Mastro is I would triple check that
13 tonight. I am 90 percent sure he is not going to be here.

14 THE COURT: Now that you mentioned Stratus, it prompts
15 me to ask, because I just haven't looked, has either side
16 designated any Maest or Beltman testimony?

17 MS. LITTLEPAGE: Yes, sir.

18 THE COURT: Both sides?

19 MR. MASTRO: They have, your Honor. We are going to
20 have counterdesignations to theirs when they offer them in the
21 case. The counterdesignations would include, in responding to
22 their deposition designations which came at an earlier point in
23 time, the actual declarations that they signed. We will
24 explain why.

25 THE COURT: Help me understand here. Were they

DB68CHE7

1 deposed before or after the settlement?

2 MR. MASTRO: Before, your Honor. And much of what has
3 been designated, what would be objected to, it goes to merits
4 types issues. And of course in their declarations, they
5 explain that they are renouncing some of their prior testimony
6 and expressing their regret at having been a part of this.

7 THE COURT: If their depositions get in, are you going
8 to call them on rebuttal?

9 MR. MASTRO: Unlikely that we will, but we may have
10 to. It depends on whether our counterdesignations and the
11 declarations are received.

12 THE COURT: I understand.

13 Ms. Littlepage.

14 MS. LITTLEPAGE: Can I raise one issue? Mr. Mastro
15 has told us that he is going to be calling, I think, Dr. or
16 Mr. Grau. I believe that Mr. Grau's testimony is virtually 100
17 percent cumulative and repetitive of Ms. Elena's. Can we not
18 file a written motion and just ask the Court to look at those
19 two witness statements? I am raising that objection because I
20 think they are very, very similar.

21 THE COURT: This is a question, it's a leading
22 question, but I am not trying to suggest the answer. Is the
23 Grau witness statement more or less along the lines of the
24 affidavit he put in on the preliminary injunction?

25 MR. MASTRO: Yes, it is, your Honor, updated with

DB68CHE7

1 events that have happened over the last two years.

2 THE COURT: It sounds to me it's not too cumulative,
3 and in any case, I think in light of some of the testimony
4 yesterday, I am not going to exclude it, even if there is some
5 overlap, unless, of course, the defense is in a position of
6 stipulating to the veracity and accuracy of Ms. Elena's
7 testimony and to her qualifications, etc., etc., which I assume
8 you're not doing, right?

9 MS. LITTLEPAGE: That's correct.

10 THE COURT: Fair enough.

11 Now, there was one other question that's been lurking
12 in my mind for a long time. And if you don't know the answer
13 now, Mr. Mastro, you can let me know tomorrow. Was the amended
14 complaint ever served on the defendants who never answered?

15 MR. MASTRO: Your Honor, I believe that they had
16 defaulted by then, but I will confirm whether there was any
17 form of service or whether they had already defaulted by then
18 and essentially there was not.

19 THE COURT: Does Chevron intend to move for a default
20 judgment against the non-answering defendants?

21 MR. MASTRO: At the end of the case, your Honor, we
22 believe that we would be entitled to do that.

23 THE COURT: I know that. That's why I asked the
24 question.

25 MR. MASTRO: I think that would be our intention to do

DB68CHE7

1 that. I will consult with folks and let your Honor know for
2 sure tomorrow.

3 THE COURT: OK. Anything else this evening?

4 MR. FRIEDMAN: Could I just ask if you did in fact
5 receive our Doe 3 brief?

6 THE COURT: I did.

7 MR. FRIEDMAN: Thank you.

8 THE COURT: Oh, yes. Why don't we try to dispose of
9 that right now.

10 Mr. Mastro, if you can, try to persuade me as to why
11 the reason I essentially ruled her out as a live witness,
12 unless I went further, in terms of giving access to her
13 identity and so forth, doesn't apply equally to deposition
14 testimony?

15 MR. MASTRO: I think it really boils down to three
16 fundamental points.

17 Number one, the issues on which Doe 3 has testified at
18 length at a deposition, most of the time of which was taken by
19 the defendants -- I am not going to mention any names, don't
20 worry -- your Honor, involved all issues that had been in this
21 case since at least January of this year, for reasons that your
22 Honor is well aware of. And issue was joined in all of these
23 particulars at that time. All counsel, all parties knew.
24 Certain core issues about what went on in Lago Agrio and what
25 went on with Judge Zambrano were front and center in this case

DB68CHE7

1 even earlier than January, but certainly from then on. So
2 every single aspect of this notion that there is something new
3 that needs to be investigated is just not the case. Number
4 one.

5 Number two, it's important corroborative testimony in
6 a case where there is one witness who has very clear testimony
7 about what happened here, another who is giving a very
8 different version of events. A corroborating witness who is
9 going to be called, if that person will come here, to
10 supposedly support this --

11 THE COURT: You told me she won't come here.

12 MR. MASTRO: Maybe that would make some difference,
13 but I am just trying to explain why --

14 THE COURT: Maybe it would make some difference?

15 MR. MASTRO: If she does not come here. But the fact
16 of the matter is --

17 THE COURT: Am I misunderstanding, didn't I get a
18 letter from you saying, given what I have said, she is not
19 coming.

20 MR. MASTRO: I'm sorry. Doe 3 is not coming. I
21 thought you meant Calva, the other witness.

22 THE COURT: No, no. We are talking about Doe 3's
23 deposition.

24 MR. MASTRO: I understand. And I am saying that you
25 have Doe 3 in many particulars corroborating one witness.

DB68CHE7

1 THE COURT: Believe me, you don't have to put any more
2 on the record. I know what she allegedly corroborates. The
3 question that I put to you is, why I should take the deposition
4 any more than I should take the live testimony, except after
5 further disclosures and so forth? I got part of your answer,
6 maybe all of your answer. What I got was, had they been doing
7 their homework, they would have tracked this down a long time
8 ago all on their own.

9 MR. MASTRO: So there is no prejudice, your Honor. It
10 really brings me to my third point here. I think your Honor
11 should have the benefit of that testimony under oath, just like
12 your Honor is being asked to consider and is willing to
13 consider other witnesses coming forward very recently while the
14 trial is in progress, and I think your Honor should take the
15 evidence.

16 THE COURT: There is a difference.

17 MR. MASTRO: I understand there is a difference. As
18 your Honor has already so aptly noted, it is not the case that
19 there is in civil cases, under these extraordinary
20 circumstances, where there are such grave security risks, that
21 there is a right to confrontation and disclosure of the
22 identity of every individual witness. The fact of the matter
23 is I think your Honor took reasonable precautions under the
24 circumstances and should have the benefit of considering that
25 evidence. I think your Honor could do what your Honor has done

DB68CHE7

1 in some other circumstances, which is that your Honor has made
2 rulings and said that you will consider an issue in a certain
3 light, but also, alternatively, explain in any ruling whether
4 that was the dispositive evidence on any particular point or
5 not.

6 THE COURT: You're saying that I should just sort of
7 take it conditionally, and then if I decide that the defense is
8 right, I shouldn't consider the deposition and simply say I
9 didn't consider it.

10 MR. MASTRO: That's exactly what I am saying. I have
11 to say one last thing.

12 The problem here, and I have to say it, and I am going
13 to be careful with my words, but her unavailability has been
14 procured by parties acting in concert with the defendants. And
15 we have a situation where it's really not right that, in our
16 view, that this individual, who had the courage to come
17 forward, is experiencing things even now where she is feeling
18 those pressures. And I have to say, your Honor, there are
19 things that happened, we were going to write to your Honor
20 about tonight, things that just happened this week that
21 suggests to us there have been disclosures about her with the
22 parties with whom they are collaborating, and we will be happy
23 to make the Court aware of those. But I think it would be a
24 shame for the Court to not have the ability to consider that
25 evidence, to keep that issue open. Each side can designate

DB68CHE7

1 from that deposition, especially under these circumstances
2 where they were not prejudiced, in fact, and where the
3 witness's unavailability, in essence, is being procured by
4 those acting in concert with the other side.

5 THE COURT: All right. Mr. Friedman, let's cut to the
6 chase. If I exclude this and rule for the defense, depending
7 on what the basis for the decision was, this is potentially
8 reversible error, right?

9 MR. FRIEDMAN: If you rule in our favor?

10 THE COURT: If I exclude her testimony and I say for
11 the sake of argument that the witnesses whom she allegedly
12 corroborates are not credible, and on that ground rule for you,
13 they have an argument on appeal that my excluding the
14 deposition was reversible error because I excluded the
15 corroboration that might have led me to come to a different
16 view on the credibility of others, right?

17 MR. FRIEDMAN: No. Well, I would say it's an awfully
18 weak argument.

19 THE COURT: That's what I expect you to say.

20 MR. FRIEDMAN: Your Honor, what they are saying is, we
21 should be allowed to corroborate these other witnesses with a
22 witness that the defense doesn't get to investigate, that we
23 don't get to know. How much corroboration is provided by a
24 witness whose opportunity to see what she says she saw is not
25 going to be explored, whose bias is not going to be explored,

DB68CHE7

1 all the normal things.

2 THE COURT: I understand all of those arguments. But
3 if an appellate court were to say that, notwithstanding all
4 those arguments, it was error not to at least consider her
5 testimony, discounted for all of those arguments, but not to at
6 least have considered it, could be new trial, right?

7 MR. FRIEDMAN: I suppose. I think we both know that's
8 a long, long, long shot.

9 THE COURT: We both know there have been longer shots
10 in this life.

11 MR. FRIEDMAN: Fair enough.

12 THE COURT: Right.

13 MR. FRIEDMAN: Yes.

14 THE COURT: It works the other way too, correct?

15 MR. FRIEDMAN: It works the other way much more
16 strongly, but yes.

17 THE COURT: Maybe, maybe not. So why isn't the answer
18 for me to just take it conditionally and simply make clear when
19 I rule that I either have or have not considered it and why?

20 MR. FRIEDMAN: Your Honor, there are, I would say,
21 huge due process problems to that. You are a fact finder.
22 You're wearing two hats.

23 THE COURT: I already know what it is.

24 MR. FRIEDMAN: I understand. The appellate court is
25 not going to be able to know -- let me step back. You still

DB68CHE7

1 have the fundamental problem that you may make a decision -- I
2 guess this goes to the risk on appeal, if you will. You may
3 say, in my view, my honest view, I can rely on this witness for
4 the following reasons, to corroborate these other witnesses,
5 without knowing anything about issues X, Y, Z. But we don't
6 know what we don't know, and I think there is a huge due
7 process problem with having --

8 THE COURT: That's rearguing.

9 MR. FRIEDMAN: I am trying not to reargue, but there
10 is a point I do want to argue, your Honor, or at least raise
11 the issue, which is Mr. Mastro repeatedly has said there are no
12 new issues here, and I don't want the record to suggest that we
13 agree with that. If we went into chambers, I can take you
14 through her statement, her deposition, and point to the new
15 issues. I think it's not correct that there are not new issues
16 here. In other words, if she says X, can we now bring a
17 witness to address X? You're going to say, or Mr. Mastro is
18 going to say, well, we don't even know if the judge is going to
19 consider it.

20 THE COURT: You have already told me the rest of your
21 case, and if any of those people has something to say that
22 without breaching the confidentiality might have a bearing, you
23 have got it, right?

24 MR. FRIEDMAN: I appreciate that.

25 THE COURT: I am not saying anything new.

DB68CHE7

1 MR. FRIEDMAN: It wasn't clear to me. There are
2 things that are in that deposition that we do have witnesses
3 who can address, at least one witness who can address, and if
4 you say we have got it, I will take that.

5 THE COURT: That was not a ruling. That was an
6 assumption because you have laid out who your witnesses are.
7 My strong inclination is to say the deposition is lodged with
8 me, and it has been offered, and I will rule on its
9 admissibility in the fullness of time.

10 MR. FRIEDMAN: The problem I see is if you then say, I
11 am relying on X in this witness's statement, once you have made
12 that decision, we should be provided the opportunity to present
13 you with evidence that goes contrary to X. Again, she wasn't
14 able to see or maybe she has got a huge bias against Mr.
15 Donziger. Maybe she had an affair with Mr. Donziger and now
16 she is -- I am just making stuff up obviously. We don't know.
17 We won't be given an opportunity, if you say in your order I
18 have relied on X, we won't ever be given the chance to respond,
19 to do the most basic fundamental investigation. That's the
20 problem with that.

21 THE COURT: All right. You have persuaded me. It's
22 out.

23 Have a good evening.

24 (Adjourned to November 7, 2013, at 9:30 a.m.)
25

INDEX OF EXAMINATION

| Examination of: | Page |
|-----------------|------|
|-----------------|------|

| | |
|------------------|--|
| NICOLAS ZAMBRANO | |
|------------------|--|

| | |
|--------------------------------|-------|
| Direct By Mr. Mastro | .1735 |
|--------------------------------|-------|

| | |
|------------------------------|-------|
| Cross By Mr. Booth | .1805 |
|------------------------------|-------|

PLAINTIFF EXHIBITS

| Exhibit No. | Received |
|-------------|----------|
|-------------|----------|

| | |
|----------------|-------|
| 6401 | .1735 |
|----------------|-------|

| | |
|---------------|-------|
| 411 | .1764 |
|---------------|-------|

| | |
|----------------|-------|
| 6321 | .1781 |
|----------------|-------|